
(1931) 12 AHC CK 0023
In the Allahabad High Court

Lachhmi Narain Girdhari Lal

APPELLANT

Vs

Mansa Ram Murlidhar and Another

RESPONDENT

Date of Decision : 18-12-1931

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 64

Citation : AIR 1933 All 82

Hon'ble Judges : Sulaiman, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sulaiman, J.—This is an appeal by certain attaching: creditors. It appears that the appellants Lachhmi Narain Girdhari Lal held a money decree of the year 1925 against Ram Din Hazari Lal respondent 2, who had obtained another decree from the High Court in 1929 for Rs. 11,750-against Mansaram Murlidhar, respondent 1. The High Court had varied the decree of the first Court and an application for leave to appeal to their Lordships of the Privy Council was filed by Mansa Ram Murlidhar in October 1929. While that application was pending the appellants executed their own decree and got the decree of Ram Din Hazari Lal against Mansa Ram Murlidhar attached by the execution Court on 29th March 1930. The findings of the Court below do not make it clear whether Mansa Ram Murlidhar received notice or had knowledge of this attachment before 23rd May 1930. On 12th April 1930 Lachhmi Narain Girdhari Lal who had attached the decree of Ram Din Hazari Lal applied for the execution of the latter's decree. While these execution proceedings were pending a written compromise was filed in the High Court on 23rd May 1930, entered into between Ram Din Hazari Lal and Mansa Ram Murlidhar upon which the decree-holders agreed to reduce the amount of the decree from Rs. 11,750 to Rs. 3,000 in full satisfaction of their claim. There were certain conditions put down in the compromise as regards the payment of the amount up to the time of the verification of the compromise in the Court below. On 28th June 1930, Rs. 3,000 were deposited in Court by means of an application which stated that there were a number of attaching creditors

including the present appellants. On a report from the Court below having been received the High Court passed the following order:

Let the application in Privy Council Appeal No. 41 of 1929 be dismissed without costs, the appellant having fulfilled the terms of the compromise which has been entered into between the parties and which has been duly verified. The result is that the decree against the applicant has been fully satisfied.

2. In the course of the execution proceedings the attaching creditors took up the position that the compromise entered into between Ram Din Hazari Lai, the decree-holders and Mansa Ram Murlidhar, the judgment-debtors, was in no way binding upon the attaching creditors as the decree had been attached. The Court below has overruled this contention and has come to the conclusion that the deposit having been made for payment to the attaching creditors with the consent of the High Court and there being nothing to show that the compromise was collusive, the decree must be deemed to have been fully satisfied. The attaching creditors have appealed and it is urged on their behalf that the compromise does not in any way affect their right. The agreement between the decree-holders and the judgment-debtors to reduce the amount decreed by the High Court was in the nature of an adjustment of their claim because the application for leave to appeal to their Lordships of the Privy Council was pending and in that sense the High Court's decree had not become absolutely final. The case therefore does not strictly speaking fall within the scope of Section 64, Civil P.C. for in this case there was neither any private transfer nor delivery of the property attached nor of any interest therein or any payment to the judgment-debtor of any debt or money etcetera. It was on the face of it a compromise of a doubtful claim in order to put a stop to further litigation. The agreement of 23rd May 1930 would therefore not be invalid by virtue of the provisions of Section 64, Civil P.C.

3. Order 21, Rule 53 prescribes the method in which a decree of another Court can be attached. The attachment is made by the issue to such Court of a notice by the Court which passed the decree requesting such Court to stay the execution of its decree unless the notice be cancelled, or the holder of the decree sought to be executed applied to the Court receiving such notice to execute its own decree. Sub-rule (6) provides that on the application for attachment having been given the Court shall give notice of such order to the judgment-debtor bound by the decree attached and

no payment or adjustment of the attached decree made by the judgment-debtor in contravention of such order after receipt of notice or of knowledge thereof, either through the Court or otherwise shall be recognized by any Court so long as the attachment remains in force.

4. It is therefore clear that no payment or adjustment of the attached decree with notice of knowledge of such attachment can have any effect as against the attaching creditors. Order 22, Rule 10 provides that in other cases of an

assignment, creation or devolution of any interest the proceeding in a suit may be continued by or against the person to or upon whom such interest has come or devolved. Sub-rule (2) provides that

the attachment of a decree pending an appeal therefrom shall be deemed to bear interest entitling the person who procured such attachment to the benefit of Sub-rule (1).

5. It follows that if leave for appeal to their Lordships of the Privy Council had been granted the attaching creditors might have applied to be impleaded as a party to the appeal. Ram Din Hazari Lal's decree having been attached, they were no longer free to deal with the subject-matter of the litigation and agree to give up a portion of the decretal amount to the prejudice of the attaching creditors without their consent and behind their back. There is no doubt that the compromise was in the nature of an adjustment of the attached decree and came within the purview of Order 21, Rule 53(6), Civil P.C. There is also no doubt that the adjustment was made on 23rd May 1930 when the written application was filed and it cannot be deemed to have been kept in abeyance till the payment was made in pursuance of it. A somewhat similar case came up for consideration before a Bench of the Lahore High Court in *Rattan Lal Sultan Singh v. Bishan Sahai Bhagwan Das* AIR 1928 Lah 1834 where also a compromise had been effected agreeing to receive a certain sum from the judgment-debtors in full satisfaction of the decree. The attaching creditors had however been impleaded in the suit and were no parties to the compromise. The Bench held that in view of the provisions of Order 21, Rule 53(6), Civil P.C. the alleged settlement cannot bind the attaching creditors as the attachment was still in force and the attaching creditors were not aware of the proceedings taken to get the satisfaction of the decree recorded by the Court. In the present case the attaching creditors had not been impleaded at all. But that in our opinion does not make any difference. As a matter of fact it is a startling circumstance "that in the High Court, notice was not specifically drawn by counsel to the matter that the decree had been previously attached by the other creditors.

6. After the passing of the decree the High Court became functus officio and could not modify the decree or pass an order superseding it. If after payment the appeal had been allowed by their Lordships of the Privy Council and the decree varied, the order would undoubtedly have been binding on the attaching creditors. But no order was passed by any competent Court superseding the previous decree and the mere fact that the application for leave to appeal to their Lordships of the Privy Council was dismissed on the ground that a certain compromise had been entered into is not tantamount to a fresh order superseding the decree and passing a fresh decree in terms of the compromise. Such an order _was not and could not have been passed. The parties before the High Court were agreed that the matter had been compromised and the terms of the compromise had been carried out. The High Court accordingly dismissed the application for leave to appeal summarily. The compromise was at best in the

nature of a private, agreement between the parties out of Court and cannot have any higher effect. For the purposes of execution, it was an adjustment of the attached decree which without notice or knowledge of the attachment could not in any way affect the rights of the attaching creditors, and could not be recognized by the execution Court at all so long as the attachment remained in force.

7. As pointed out above there is no clear finding that the original judgment-debtor, Mansa Ram Murlidhar, had notice or knowledge of the attachment of the decree of Ram Din Hazari Lal which had been passed against them, before they entered into the compromise of 23rd May 1930. In order that Order 21, Rule 53(6), may apply it is necessary to have a clear finding that they had such notice or knowledge of the attachment. We accordingly send down the following issue to the Court below for determination; Did the judgment-debtor of the attached decree, namely, the proprietor of Mansa Ram Murlidhar have notice or knowledge, either through the Court or otherwise, of the attachment by Lachhmi Narain Girdhari Lal of the decree of Ram Din Hazari Lal against the firm on or before 23rd May 1930. As this is a fresh issue which is being sent down for determination the parties will be at liberty to adduce fresh evidence. The findings should be returned within two months from this date if practicable. On receipt of the findings the usual ten days will be allowed for objections.