
(1939) 11 PAT CK 0011
In the Patna High Court

Ram Kumar Ram Saraff

APPELLANT

Vs

Mohan Lal Maharaj

RESPONDENT

Date of Decision : 30-11-1939

Acts Referred:

Transfer of Property Act, 1882 — Section 53

Citation : AIR 1940 Patna 270

Hon'ble Judges : Meredith, J;Fazl Ali, J

Bench : Full Bench

Judgement

Fazl Ali, J.—This is an appeal by defendant 1 (one of the defendants first party) in a suit under Order 21, Rule 63, Civil P.C., which has been decreed in favour of the plaintiff. It appears that defendants 15 to 19 (defendants third party) owed money to the plaintiff as well as to defendants first party. On 2nd April 1930, defendant 15 and one Meghraj, who held a power of attorney from defendant 16, executed a deed purporting to assign in favour of the plaintiff a decree for Rs. 2506 obtained by defendants third party against defendants second party. This decree was subsequently appealed against by defendants second party, but their appeal was dismissed and the decree was upheld by the Appellate Court on 7th September 1934. In 1934 defendants first party executed a decree which they had obtained against defendants third party and on 5th October 1934, they attached the appellate decree passed on 7th September 1934 in favour of defendants third party against defendants second party.

2. On 23rd January 1935, the defendants second party paid a sum of Rs. 3369 which was the total amount due on that date under the decree attached by them and the defendants first party filed a petition of satisfaction. The plaintiff thereupon applied under Order 21, Rule 58, and claimed that the decree in question having been assigned to him in 1930, the defendants first party could not attach it afterwards in execution of their decree and that he was entitled to the sum which had been realized by defendants first party from the judgment-debtors (defendants second party) This claim was disallowed and so on 22nd July

1935, the plaintiff instituted the present suit. The suit having been decreed in the Courts below, one of the defendants first party has preferred this second appeal impleading defendants 2 to 4 as respondents in the appeal.

3. It may be stated here that in the suit which defendants third party, had brought against defendants second party, the judgment was pronounced on 31st March 1930, that is to say, two days before the deed of assignment, but the decree was not prepared and signed until 7th April 1930. The first point raised on behalf of the appellant is that the plaintiff did not acquire a valid title to the decree inasmuch as it was not in existence on the date of the assignment. In support of this argument it has been pointed out that the Code itself draws a distinction between a judgment and a decree and that no decree can be enforced until it has been prepared and signed. I think however that a complete answer to this contention is provided by Order 20, Rule 7 which provides that the decree shall bear the date on which the judgment was pronounced.

4. The assignment of a decree is nothing more than an assignment of the rights conferred by the decree. These rights are acquired as soon as the decree is passed or pronounced and cannot be made dependent on the preparation of the decree which is more or less a ministerial Act. As the Code provides that the decree shall bear the date on which the judgment is pronounced, the decree must in the eye of law be presumed to have come into existence on the date on which the judgment was pronounced. The mere fact that the decree cannot be executed until it has been prepared and signed cannot avail the appellant, because the law makes it necessary that a petition for execution must contain certain particulars embodied in the decree.

5. The learned advocate for the appellant has placed some reliance upon *Gela Ram v. Ganga Ram* AIR (1920) Lah 395 in which the Court refused to entertain an appeal on the ground that no decree had been prepared in the case in which the appeal had been preferred. The facts of the case were however peculiar and the case is hardly in point.

The next question raised on behalf of the appellant was that because the plaintiff was the assignee of the decree of the trial Court only, the assignment in his favour did not carry with it the right in the decree of the Appellate Court which was passed on 7th September 1934, and was attached by the defendants first party on 5th October 1934. A similar point appears to have been raised in *Ponnusani Filial v. Chidambaram Chettiar* AIR (1918) Mad 279 wherein it was pointed out by the learned Judges who decided that case that when a decree is assigned what is transferred is not the decree itself but the interest of the decree-holder in the decree as may be finally determined and therefore the assignment of a decree carries with it the right to the decree passed in appeal.

6. The next point urged on behalf of the appellant was that the assignment in favour of the plaintiff was not valid inasmuch as in the power of attorney held by Meghraj from Munnoo Lal no authority was given to him to execute a deed of

assignment relating to a decree. It appears from the judgments of the Courts below that there were two kartas in the joint family of which defendants 15 to 19 were members, these being Kanhaiya Lal and Munnoo Lal. From a genealogy which forms part of the written statement of defendant 1, it appears that both Munnoo Lal and Sita Ram on whose behalf Meghraj executed the assignment deed are sons of Kanhaiya Lal, one of the executants of the deed. Munnoo Lal was adopted by one Dilsukh Rai, the only son of Tormal, and Kanhaiya Lal was adopted by Balkishun Das, a brother of Tormal. It appears that Sitaram has been adopted by his brother Munnoo Lal.

7. The judgment of the trial Court further shows that the descendants of Balkishun Das and Tormal were joint. Assuming then that Meghraj was not empowered by the power of attorney to execute a deed of assignment relating to a decree, the point which is still to be decided is whether the assignment, which was admittedly executed by one of the two kartas of a joint family can be challenged by a person who is not a member of the joint family.

In my opinion this point is fully covered by the decision of the Lahore High Court in *Imperial Bank of India Jullundur v. Maya Devi* AIR 1935 Lah 867 which is based upon the observation made by the Judicial Committee in *Hanuman Kamat v. Hanuman Mandur* (1892) 19 Cal 123.

8. In that case it was held that under the Mitakshara law though the manager of a joint Hindu family cannot alienate joint family property except for family necessity or with the consent of the co-parceners if they are adults, yet an alienation by him which cannot be supported on those grounds, is not unlawful or void ab initio, but is voidable at the option of the other coparceners, who alone are affected by his unauthorized act, and no person who is a stranger to the family and does not possess a right to have the transaction defeated on other grounds (e.g. u/s 53, T.P. Act) has a locus standi to intervene and impugn such an alienation, merely because it is in excess of his authority to deal with the property for family purposes.

9. In the present case the assignment was never challenged by Munnoo Lal or Sitaram. Thus, the question as to whether Meghraj was empowered to assign the decree under the power-of-attorney does not arise. I should also state that the document, though it is somewhat obscurely worded, may well bear the construction which has been put upon it by the Courts below; that is to say, it expressly authorizes Megharj to execute such documents as are signed by Kanhaiya Lal (who was after all the father of Munnoo Lal and Sitaram) without reference to Munnoo Lal and Sitaram.

10. It was contended on behalf of the respondents that this appeal is incompetent inasmuch as it has not been preferred on behalf of all the members of the defendants first party. But as the other members have been impleaded as respondents, there was nothing to prevent us from passing a decree in favour of all the defendants first party under Order 41, Rule 33, Civil P.C., if we thought

that the appeal should be allowed, The question however is merely academic because the appeal fails on its merits. I would therefore dismiss the appeal with costs and the cross-objections not being pressed by the respondents, must also be dismissed but without costs.

Meredith, J.

11. I agree with my learned brother. I do not think the findings of fact are vitiated by any misplacement of onus. On the contrary, the lower Appellate Court has correctly stated the position in observing that the onus was primarily on the plaintiff because his claim was rejected in a proceeding under Order 21, Rule 58, Civil P.C., but when evidence had been gone into on both sides, the question of onus was of secondary importance. Order 20, Rule 7, Civil P.C., seems to me a complete answer to the contention that when the assignment was made, there was no decree in existence which could be assigned. Judgment had been pronounced, although the formal decree had not been prepared, and though the decree was not signed until some days after the assignment, still under Order 20, Rule 7 the date of the decree is the date of the judgment, and the decree must therefore in law be deemed to have come into existence on the date when the judgment was delivered. The argument that it was the decree of the Appellate Court which the defendants first party attached and that that decree was never assigned is, in my view, completely met by AIR 1918 Mad 2792 wherein it was laid down that the assignment of a decree under appeal gives the assignee the right to execute the appellate decree, as what is assigned is not only the decree itself but the interest of the decree-holder therein as finally determined.

12. Lastly, the argument, that there was no valid assignment as Meghraj's power of attorney did not give him any authority to execute a sale deed relating to a decree, finds answer in Hanuman Kamat v. Hanuman Mandur (1892) 19 Cal 123. If the execution be held to be by one karta only out of the two, then the document would be merely voidable at the option of the other co-parceners and not wholly void. The assignment would therefore be valid in law unless and until avoided by any of the coparceners, or any one deriving through them. In the present case the other members of the family of the defendants third party were impleaded in the suit and did not appear to challenge the assignment. The finding moreover was that the assignment was for consideration and for benefit of the joint family. Apart from that both the lower Courts have interpreted the power of attorney (Ex. 6) as authorizing Meghraj to sign kewalas of all sorts if they bear the signature of the other karta Kanhaya Lal. The power of attorney may be badly worded but there is nothing in it, in my opinion, which would justify us in holding that the interpretation put upon it by both the Courts below is wrong.