

(1939) 01 PAT CK 0008
In the Patna High Court

Ranbahadur Singh Thakur and Others	APPELLANT
Vs	
Awadhbehari Prasad Singh and Others	RESPONDENT

Date of Decision : 30-01-1939

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 2, 47
Evidence Act, 1872 — Section 92

Citation : AIR 1939 Patna 411

Hon'ble Judges : Rowland, J;James, J

Bench : Full Bench

Judgement

James, J.—Ramsarup held a mortgage decree the dues under which including costs amounted to nearly Rs. 12,000 against Awadhbehari Prasad Singh. A maternal uncle of Ramsarup named Ramkhelawan held two money decrees against Awadhbehari, one in Begusarai and the other in Monghyr. Ramsarup and Awadhbehari agreed between themselves that the question of how Awadhbehari should settle these decrees should be referred to arbitration. This was apparently done on the assumption that Ramsarup was the real creditor in respect of the debts for which the money decrees had been obtained; but Ramkhelawan was not party to the reference to arbitration. The arbitrators decided that all three decrees should be settled by the payment of Rs. 17,500, which meant practically that one of the decrees standing in the name of Ramkhelawan would be abandoned.

2 . This was to be effected by the conveyance of Awadhbehari's share in certain zamindari property to the value of Rs. 17,500. Certain property was conveyed to Ramsarup by a deed which stated the consideration to be Rs. 12,000 which was met by writing off the dues under the mortgage decree. After this conveyance had been executed, Ramkhelawan certified satisfaction of his decree at Begusarai. Awadhbehari applied under Order 21, Rule 2 that satisfaction should be recorded of Ramkhelawan's decree in Monghyr, which after contest on the part of Rambahadur, Ramkhelawan's son, was allowed by the Subordinate Judge; and an appeal from that order was dismissed by the District Judge. The

decree-holder has come in second appeal from that decision.

3. Mr. S.N. Bose on behalf of the appellant argues that since he was no party to the agreement to refer his decree to arbitration, he cannot be treated as bound by the proceedings of the arbitrators and by those of Ramsarup and the judgment-debtor between themselves. The conveyance recites that the property is transferred for consideration of Rs. 12,000 which is met by satisfaction of the mortgage decree. Mr. Bose argues that the provisions of Section 92, Evidence Act, prohibit us from taking evidence of any oral agreement which would vary the terms set out in the document. I do not know that Proviso 2 to Section 92 would not apply in this case. The parties would not be prevented from proving the existence of a separate oral agreement to the effect that the vendee would proceed no further in the prosecution of his claim for certain money debts not specified in the deed; and I do not consider that the judgment-debtor can be prevented from attempting to prove that there was such an agreement. Mr. Bose is apparently on stronger ground when he argues that the decree-holder must be held entitled to execute his decree unless it is proved that he has himself received payment or that some other person definitely held out by him as his agent for the satisfaction of the decree has received payment from the judgment-debtor. The Courts below have come to the conclusion that Ramsarup was the real decree-holder and that Ramkhelawan was merely a benamidar. The judgment of the learned District Judge suggests that he bases his decision that Ramsarup was the real holder of the three decrees on the evidence of the arbitrators Ramcharitar Singh and Baleshwar Prasad. These men merely asserted that Ramsarup said that he was the decree-holder, a statement which would be inadmissible in evidence as proof of the fact that Ramsarup was the real owner. Awadhbehari said that Ramkhelawan was a farzidar; so he or his son Rambahadur took no step in the matter of the arbitration.

4. Mr. Bose argues that even if Ramkhelawan was a benamidar, it would be necessary before he could be prevented from executing his decree to show that he had either assigned the decree to somebody else or that he had been satisfied by somebody whom he held out as his agent. Mr. Mitter on behalf of Awadhbehari relies on the decision in Nil Kanta Ghosal Vs. Ram Chand Roy and Others, for his contention that the question of whether the person seeking execution is the true owner of the decree or not could be decided in execution proceedings u/s 47, Civil P.C. This is contrary to the view which was taken in Jasoda Deye v. Kirtibash Das (1891) Cal. 639 and in earlier cases in the Calcutta High Court, wherein it was held that the person appearing on the face of the decree as the decree-holder is entitled to execution, unless some other person can show that he has taken the decree-holder's place by an assignment of the decree or by operation of law, that is, by death or succession or in some similar manner. In M.P.P.S.T. Palaniappa Chetty and Others Vs. S.N. Subramania Chettiar and Another, it was held that where a decree had been transferred by an instrument in writing, no person other than the transferee named in the document could claim the benefit on the ground that the transferee was a mere

benamidar. It must be held that in execution proceedings it is not open to the judgment-debtor to assert that the real holder of the decree is any person other than the person named as decree-holder in the decree, unless there has been a valid assignment or devolution by process of law; and that under Order 21, Rule 2, he; can only claim entry of satisfaction of the decree where payment has been made either j to the decree-holder or to some other person definitely held out by the decree-holder as his agent for the purpose of payment.

5. The decree-holder in the present case said that he accepted the arbitration to this extent that he accepted the decision that the dues under the three decrees? under the decree held by his uncle and the two held by him should be limited to Rupees 17,500; but he did not admit that the arbitration was made at his instance or that he took any part in the reference; and there is no evidence to that effect on the record of these proceedings. The decree, holder did not accept the award so far as it decided that the conveyance of this property valued at Es. 12,000 should be treated as a payment to him of his share of Rs. 17,500 represented by the two decrees. He had entered satisfaction of his decree at Begusarai and the learned District Judge inferred from this that he had been a party to the proceedings in arbitration; but the decree-holder said that he had done this on Ramsarup's telling him that Awadhbehari would pay up his decree which he held in Monghyr. There is no evidence to show that he authorized Ramsarup to treat satisfaction of the mortgage decree as satisfaction of his own decree in Monghyr, or that he held out Ramsarup to be the decree-holder or as his agent with general powers for adjustment of his dues under the two decrees.

6. I consider that in the circumstances it must be held that there was no evidence on which the Courts below could hold that Ranbahadur's decree in Monghyr had been satisfied, and that the petition of Awadhbehari under Order 21, Rule 2, ought to have been dismissed. I would accordingly allow this appeal with costs, set aside the orders of the Courts below and dismiss the petition of Awadhbehari Prasad Singh under Order 21, Rule 2. The appellant is entitled to his costs throughout.

Rowland J.

7. I agree. An adjustment to which the decree-holder is not a party cannot be recognized by the executing Court. The contrary position seems inconsistent with the provisions of the Code. Section 2, Clause (3) defines "decree-holder" as the person in whose favour a decree has been passed or order capable of execution has been made by a Court and this must mean the person named in the decree. Then we have Order 21, Rule 1, directing that all money payable under a decree is to be paid either into the Court or out of Court to the decree-holder or otherwise as the Court may direct. Then Order 21, Rule 2, refers to payment out of Court or adjustment of the decree "to the satisfaction of the decree-holder" and does not recognize any payment or adjustment to the satisfaction of some third party. And Rule 2, Clause (3) lays down that a payment or adjustment which has not been certified or recorded as aforesaid shall not be recognized by

any Court executing the decree.

8. The facts put in issue in this case were matters between the judgment-debtor and Ramsarup, a stranger to the suit, rather than between the judgment-debtor and the decree-holder named in the decree. The proper place for the disputes between the judgment-debtor and Ramsarup to be settled is not in the executing Court but in separate and appropriate proceedings. I also agree with the reasoning of my learned brother and I concur in the order proposed to be passed.