

(1924) 05 CAL CK 0040
In the Calcutta High Court

Srimati Giribala Dassi

APPELLANT

Vs

Biswambhar Haldar

RESPONDENT

Date of Decision : 08-05-1924

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 2(2)

Citation : 82 Ind. Cas. 746

Hon'ble Judges : Pearson, J;Graham, J

Bench : Division Bench

Judgement

1. This is an appeal by the opposite party Giribala Dasi and arises out of an application made under Order XXI, Rule 2(2) of the CPC for certifying payment of a decree and alleged satisfaction out of Court.

2. The learned Subordinate Judge found on the evidence that the alleged payment of Rs. 730 in satisfaction had been proved and directed satisfaction of the decree to be recorded accordingly. Against that order the present appeal has been filed, and the grounds on which it has been assailed are firstly, that the final decree not having been drawn up at the date when the application was made, the application was not maintainable, and secondly, that the Court below ought to have held on the evidence that the receipt (Exhibit I) was not a genuine document.

3. In connection with the first point it is necessary to refer to Order XXI, Rule 2(1) and (2) of the Civil Procedure Code, which read as follows: "2 (1) Where any money payable under a decree of any kind is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

(2) The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment

should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

4. The application for certification of the payment in question was based upon these provisions and was made on the 6th January 1922. It appears however that though judgment in the suit in question had been delivered on the 28th June 1921, the final decree was not drawn up until the 5th February 1923, i.e., subsequent to the date of the application. It has been argued, therefore, on behalf of the appellant that, as no decree was in existence at the date when the application was made, the application was not maintainable under Order XXI, Rule 2. In support of this view reference has been made to the definition of "Decree" in Section 2 of the CPC and in particular to the words "formal expression" occurring therein, the argument being that, unless and until the decree had been formally drawn up, it cannot be regarded as having come into existence. There is no doubt some force in this contention. On the other hand it is laid down in Order XX, Rule 7, that "the decree shall bear date the day on which the judgment was pronounced", and the date of the decree may, therefore, be held to be not the date on which the decree is reduced to writing and signed by the Court, but the date on which the Court delivers its judgment and expresses what the decree is. In other words when a person has the judgment of the Court in his favour it may be said that he then obtains his decree, and that the decree, when subsequently drawn up, relates back to that time. Looked at from this point of view it follows that at the date when the application was made the decree was in existence, and, that being so, no question could arise as to application being maintainable. The point is not altogether free from difficulty, but we prefer on the whole not to place too narrow a construction upon the wording of the rule. We may also point out incidently that this contention upon which so much stress has been laid in this Court, was not raised at all in the Court below.

5. With regard to the second point urged on behalf of the appellant the learned Subordinate Judge has found as a fact without hesitation that the payment in question was made, and upon a consideration of the evidence, we are certainly not prepared to hold that that conclusion is wrong. On the contrary the evidence appears to leave no room for doubt regarding the genuineness of the receipt.

6. In the result, therefore, the appeal fails and is dismissed with costs. We assess the hearing fee at two gold mohurs.