

(1930) 04 AHC CK 0036
In the Allahabad High Court

Unao Commercial Bank Ltd.	Vs	APPELLANT
Mohar Gobind Rai and Another		RESPONDENT

Date of Decision : 09-04-1930

Acts Referred:

Citation : (1930) 04 AHC CK 0036

Hon'ble Judges : Sulaiman, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sulaiman, J.—This is an appeal by the Unao Commercial Bank Limited arising out of certain execution proceedings under the following circumstances: Mohar Gobind Rai and Inderjit Gobind Rai were indebted to one Sheo Nandan Prasad who held a decree against them, The Unao Commercial Bank as well as the Punjab National Bank held money decrees against Sheo Nandan Prasad. The Unao Commercial Bank in execution of its own decree attached Sheo Nandan's decree against the original judgment-debtors Mohar Gobind Rai and Inderjit Gobind Rai. The Punjab National Bank also applied for execution and attached the same decree which was in execution at that time in Cawnpore. Later on the Unao Commercial Bank applied to the Cawnpore Court for the transfer of the execution to Gorakhpur where properties belonging to the original judgment-debtors were situated. The Punjab National Bank did not make any separate application but the Court, in its certificate of transfer, noted that the said decree of Sheo Narain had been attached in execution of the Punjab National Bank also and that whatever money is realized by means of execution should not be paid to the attaching creditor, the Unao Commercial Bank Limited, but should be forwarded to Cawnpore for rateable distribution.

2. At Gorakhpur the Unao Commercial Bank applied, on 11th January 1928, for execution of the decree without any reference to this note in the certificate of transfer. On 8th February 1928, Babu Raghunath Prasad, the pleader for the decree-holder, the Unao Commercial Bank Limited, certified the payment of Rs.

1,000 by the judgment-debtors to the said bank and filed a receipt for the same. The Court accepted this verification on his statement and the payment was certified. On that date the Court's attention was not drawn to the fact that there was a note in the certificate of transfer under which the payment should not have been received by that bank alone. Later on, when the office brought this circumstance to the notice of the Court the pleader was called upon to deposit the amount in Court. Various adjournments were allowed and the Court appears to have been unnecessarily lenient to him in giving time to deposit the amount. His excuse was that he had put it in a fixed deposit in some bank, but in spite of successive orders of the Court he was unable either to produce the fixed deposit receipt or pay the amount in Court. It is noteworthy that on 20th August 1928 an application was presented by the Unao Commercial Bank itself through their authorized agent Rambali praying that three weeks' time be allowed to B. Raghunath Prasad, its pleader, and admitting that he had received the whole amount and would make the deposit. There was a further prayer that execution should proceed with regard to the rest. When so much delay had occurred the Court finally ordered that unless the amount was deposited forthwith he would report the conduct of the pleader to the District Judge. Soon after this the pleader concerned died but the certificate of payment remained on the record as it had stood Before. The Court finally ordered that the decree was paid up and the Cawnpore Court should be informed of it and also of the fact that Rs. 1,000 had been paid to the decree-holders' pleader and the amount should be credited in the decree-holders' account. The Court further expressed the opinion that if the bank had suffered any loss it could recover the amount from the heirs of the pleader.

3. The Unao Commercial Bank has preferred this appeal to which the Punjab National Bank is not a party. On their behalf it is urged that the payment made to the pleader was illegal and wholly unauthorized and the certificate was not valid and operative and that therefore the bank is entitled to further execute the decree and realize the amount from the judgment-debtor. Reliance is placed on the definition of the word "decree-holder" in Section 2(3) which says that it means any person in whose favour a decree has been passed or an order capable of execution has been made. The argument is that this definition cannot apply to an attaching creditor and that therefore an attaching creditor is not contemplated in Order 21, Rule 1, as the person to whom payment can be made out of Court. As authority for this proposition the learned advocate for the appellant relies on the case of Ram Prasad Vs. Rajjan and Another, . The judgment in that case showed that the attachment of the decree had automatically come to an end as a result of their application having been struck off for default of prosecution on 23rd December 1922. It was alleged that Rambadan, the judgment-debtor, had made payment of the amount to these attaching creditors. The learned Judge held that the payment was not a valid payment under Order 21, Rule 1(b). He further held that their decree having been passed as early as 1907, their application of 1922 was barred by the twelve years' rule of limitation. The

learned advocate for the appellant relies on the observations of the learned Judge in the judgment which, according to him, imply that no payment within the meaning of that rule can ever be made to an attaching creditor of the decree-holder, and that a debtor liable under a decree which has been attached cannot be allowed to make payment to the person who has attached the decree against him. The respondent was not represented by any counsel, and the learned Judge has not discussed the provisions of Order 21, Rule 53. After our judgment had been delivered we sent for the record of that case and discovered that the payment had been alleged to have been made on 2nd December 1922, while the attachment was still subsisting, and also that the case was considered by a Letters Patent Bench in appeal. The Letters Patent Bench pointed out that the attention of the learned Judge was not drawn to Sub-rule (3), Order 21, Rule 53, but did not consider it necessary to go into the question because in their opinion the appeal failed on the ground that the decree of the attaching creditors had become barred by lapse of time and was incapable of execution after 12 years.

4. No doubt a decree-holder is defined as a person in whose favour a decree has been passed or an order capable of execution has been made, but u/s 146, Civil P.C., where any proceeding may be taken or application made by or against any person then the proceeding may be taken or the application may be made by or against any person claiming under him. It, therefore, follows that the representative of a decree-holder is entitled to take the same proceeding as the original decree-holder in whose favour the decree was passed.

5. No doubt Order 21, Rule 1, under which payment can be made to the decree-holder out of Court, speaks of the decree-holder, but there can be no reason to suppose that it would not include his representative who is entitled to act in his place. The representative of the decree-holder for the time being would undoubtedly be entitled to receive payment in the same way as his predecessor in whose favour the decree was passed. Order 21, Rule 53(3) which deals with the attachment of decrees provides that the holder of a decree said to be executed by the attachment of another decree for payment of money shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof. This provision makes it quite clear that once a decree has been attached by another decree-holder, the latter becomes a representative of the holder of the attached decree and is entitled to take out execution in the same way as the original holder thereof. If the decree-holder could himself, before attachment, take the money out of Court and certify payment, his representative would be entitled to do the same. It is possible that in actual practice this would leave a door open for fraud, but that circumstance cannot be taken into account when we are considering the effect of the provisions of Order 21 as they stand. Under Rule 1 of that order a judgment-debtor can make payment to the decree-holder out of Court, and there is nothing in that order which prevents him from doing so when the execution proceedings are being carried on by another creditor who has stepped into the shoes of his original decree-holder. Of course, in such cases

the Court would obviously require the attaching creditor to deposit in Court the surplus of the amount realized in case there be any, i.e., the amount in excess of his own decree.

6. In the particular case before us there were two attaching creditors, of which fact the judgment-debtors must have had notice. We, therefore, do not wish to decide the question whether if the Punjab National Bank had been trying to execute the decree and claiming that the certificate of payment given by only one of the decree-holders was insufficient and did not amount to a valid discharge, the position would not have been different. It is possible to hold that the decree-holder mentioned in Order 21, Rule 2 must mean all the decree-holders jointly interested for the purposes of the certificate. We, however, leave this point open.

7. We think that in the present case it is not open to the Unao Commercial Bank to proceed with further execution of the decree and try to recover the amount over again from the judgment-debtors. The position, in our opinion, is the same as if payment had been made by the judgment-debtors directly to the bank, and the bank, in spite of receipt of the amount, was trying to execute the decree afresh. In such an event the Bank would obviously have been estopped by its own conduct.

8. In the present case the amount was paid by the judgment-debtors not to B. Raghunath Prasad in his personal capacity but as the authorized wakil of the bank, and the certificate of payment was given by B. Raghunath Prasad on behalf of the bank as its authorized pleader. The admission contained in the application of the 20th August 1928, made by the bank through its authorized agent Ram bali, was also an admission made by a party to the proceeding. The bank, therefore, is bound by the action taken by its own authorized agent in the course of the execution proceedings, and it cannot be allowed to go back upon that action on an assertion that the amount has actually been withheld by its agent and not paid to the bank. If it has suffered in any manner its remedy is against the heirs of its own agent or against any other agent who might have been in collusion with him. We, therefore, think that it is sufficient to dismiss the appeal on the ground of estoppel. The appeal is accordingly dismissed with costs including in this Court fees on the higher scale.