

(1952) 02 BOM CK 0007

In the Bombay High Court

Case No : Letters Patent Appeal No. 44 of 1950

Valchand Gulabchand Shah

APPELLANT

Vs

Manekbai Hirachand Shah and Another

RESPONDENT

Date of Decision : 08-02-1952

Acts Referred:

Civil Procedure Code, 1882 — Section 244, 258

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 1, Order 21 Rule 15, Order 21 Rule 15(2), Order 21 Rule 2, Order 32 Rule 7

Transfer of Property Act, 1882 — Section 88

Citation : AIR 1953 Bom 137 : (1952) 54 BOMLR 901 : (1953) ILR (Bom) 356

Hon'ble Judges : Vyas, J;Rajadhyaksha, J

Bench : Division Bench

Advocate : S.S. Kavalekar and R.G. Samant, for the Appellant; M.G. Chitale, for the Respondent

Judgement

Rajadhyaksha, J.

(1) This is an appeal under the Letters Patent from a decision of Mr. Justice Shah in First Appeal No. 284 of 1949 which confirmed the order of the Civil Judge. Senior Division, Sholapur, in Darkhast No. 883 of 1946.

(2) One Hirachand Gulabchand and his sort Manoranjan filed a suit against Hirachand's two brothers, Shivilal Gulabchand and Walchand Gulabchand for an account of certain property which they alleged had been entrusted to the two defendants for management. During the pendency of the suit, Hirachand, plaintiff 1, died and his widow Manekbai and his minor son Chandrashekhar were brought on record as his heirs and legal representatives and they were impleaded as plaintiffs 1A and 1B to the suit. Chandrashekhar being a minor was represented by his mother Manekbai as his next friend. During the course of the suit the parties referred their dispute to arbitration. The arbitrator made an award and a decree in terms of the award was passed on August 1, 1945. Under that decree, the defendants were asked to deliver possession of shares worth about Rs.

13,842, certain ornaments mentioned in Schedules B and C worth Rs. 13,574 and Rs. 18,550 respectively, certain silverware worth about Rs. 150 and carts and bullocks worth about Rs. 1,800 to the plaintiffs. In the alternative they were awarded a sum of Rs. 27,044. In addition to this, the defendants were asked to render accounts of the money-lending business to the plaintiffs and to pay a sum of Rs. 10,000.

Manoranjan, plaintiff 2, was the step-son of Manekbai and it appeared that after the death of his father, plaintiff 1, there were disputes between Manekbai and Manoranjan. Some of these disputes took the form of proceedings in criminal Courts. Manoranjan then admittedly started living with his uncle Walchand, defendant 2, and appeared to be supporting the defendants' case. The defendants having failed to satisfy the decree, Manekbai filed a Darkhast No. 833 of 1946 in the Court of the Civil Judge, Senior Division, Sholapur, to execute the decree on behalf of herself and her minor son Chandrashekhar. As the decree was a joint decree, the darkhast application came to be filed under the provisions of Order 21, Rule 15, which enables one or more of the decree-holders to apply for execution of the whole decree for the benefit of all decree-holders. After an order of attachment was issued by the executing Court, defendant 2, Walchand, appeared before the Court and contended (1) that the darkhast filed by Manekbai was not maintainable, inasmuch as plaintiff 2 Manoranjan had not joined in the filing of the darkhast, (2) that the ornaments mentioned in Schedules B and C had, before the date of the darkhast, been already handed over to Manekbai and Manoranjan, (3) that Rs. 10,000 had been paid to Manoranjan at the time of his marriage, and (4) that the decree-holders had agreed to take one land belonging to the defendants situated at Soregaon in satisfaction of the decree to the extent of Rs. 25,000.

(3) Both the executing Court and Mr. Justice Shah have held that the darkhast was maintainable, and that the agreement to take one land belonging to the defendants situated at Soregaon in satisfaction of the decree to the extent of Rs. 25,000 had not been proved; and these points have not been disputed before us. With regard to the ornaments mentioned in Schedule C, both the executing Court and Mr. Justice Shah have come to the conclusion that they were meant exclusively for Manoranjan and that therefore the decree must be deemed to have been satisfied "pro tanto" by the delivery of those ornaments to Manoranjan. As regards the cash payment of Rs. 10,000, which were admittedly received by Manoranjan, plaintiff 2, the executing Court held that the payment was made under an authority from Manekbai, plaintiff 1A, and gave credit in respect of that payment to all the decree-holders.

Mr. Justice Shah, however, took the view that the payment did not bind Chandrashekhar, minor plaintiff 1B, and he therefore allowed execution to proceed even in respect of that sum. So far as the property mentioned in Schedule B is concerned, both the executing Court and Mr. Justice Shah have held that there was no authority from Manekbai and there was no discharge of

the decree in respect of that item. Mr. Justice Shah, therefore, allowed execution to proceed in respect of all the items except in respect of the ornaments mentioned in Schedule C which were, according to both the Courts, meant exclusively for Manoranjan, plaintiff 2. Against that order this appeal has been filed by defendant 2 under the Letters Patent.

(4) It has not been disputed before us by Mr. Kavalekar that rendering of satisfaction to one of the several joint decree-holders does not bind the other decree-holders. But what he has urged strenuously before us is that the payment to Manoranjan should be regarded as satisfying Manoranjan's own share in the decree and that therefore the darkhast filed by Manekbai and her minor son should be allowed to proceed only in respect of their own share in the decree. He has argued that excluding the ornaments mentioned in Schedule C worth Rs. 18,550 which, according to both the Courts, belong exclusively to Manoranjan, plaintiff 2, the value of the rest of the decree was Rs. 66,410. Mr. Kavalekar says that each of the plaintiffs was entitled to 1/3rd share therein and that therefore Manoranjan was entitled to Rs. 22,136-10-8. Actual payment made to Manoranjan is Rs. 10,000 plus the value of the ornaments in Schedule B, viz., Rs. 13,574.

Thus Manoranjan has received credit to the extent of Rs. 23,574, which is slightly more than the amount which Manoranjan was, in any case, entitled under the decree. According to Mr. Kavalekar, defendant 2 does not claim any credit for the amount paid to Manoranjan in excess of his own share in the decree, but contends that the darkhast of plaintiffs 1A and 1B should proceed only with respect to the sum of Rs. 44,273 only, i.e. only 2/3rds share of plaintiffs 1 and 2 in the decretal amount of Rs. 66,410.

(5) The real point, therefore, to be considered is whether the payment to one of the several joint decree-holders does or does not amount to a discharge of that decree-holder's share in the decree with the effect that the remaining joint decree-holders can proceed to execute the decree only in respect of their own share therein. Mr. Justice Shah has held that such payment cannot be regarded as a "pro tanto" satisfaction of the share of that decree-holder who receives payment and therefore the remaining decree-holders cannot be compelled to seek execution only in respect of their own share in the decree. He has dealt with this point as follows in his judgment which is under appeal: "Now, apart from authority, a payment to one of several joint decree-holders whose individual rights in the subject-matter of the decree are not worked out either expressly or by necessary implication in the decree is not a payment to all and such payment cannot deprive the other decree-holders of their right to enforce the decree, because obviously if a right is given to several decree-holders to enforce compliance with the terms of the decree, it cannot be said that there has been a sufficient compliance of the terms of the decree when satisfaction has been rendered to one of the decree-holders, but not to all. The Court's direction must be complied with by rendering satisfaction to all persons who are jointly

interested in the decree.

The rule, however, is subject to two well recognized exceptions: (1) when the decree-holder receiving the money has authority to receive payment on behalf of all, such authority being either express or implied. This is no more than an application of the rule of the law of agency: "qui facit per alium facit per se". The authority may arise by reason of the terms of the decree or may have been granted after the decree; as, for instance, by a power-of-attorney from other decree-holders, or even may exist by relation which subsisted between the decree-holders prior to the date of the decree, but in all cases such authority not being contrary to the provision's of an express statute like Order 32, Rule 7, Civil P. C., (2) when distinct shares of the decree-holders are determined and known, payment to one of the decree-holders of his share satisfies the decree to that extent. Strictly speaking a decree envisaged by the second exception is not a joint decree; and a decree-holder who is entitled to obtain satisfaction of his right can claim it without reference to the rights of the other decree-holders.

However, if a case does not fall within either of the two exceptions, the payment to one of the several decree-holders cannot be recognised as payment to all or even to the extent of the share of the decree-holder in the property received by him (the learned Judge presumably means even to the extent of the share of the decree-holder in the whole decree). The reason for the rule is clear. If the judgment-debtor is required to pay any amount to the joint decree-holders whose shares are not specified, one of them cannot say, apart from special authority traceable to the relation subsisting or arising under or after the decree, that payment to him is payment to all. It is true that under Order 21, Rule 15, Civil P. C., the Court which is directed to execute a decree at the instance of several joint decree-holders is entitled to make an order, which it deems necessary, for protecting the interests of all the persons who have not joined in the application for execution. But such an order can be passed only for the benefit of the decree-holders who have not joined in the application for execution. Under that rule, the Court may allow execution of the whole decree on terms, but it cannot compel one or more of the joint decree-holders to levy execution for a fraction of the decree. Nor can the Court at the instance of the judgment-debtor be asked to decide a dispute between the decree-holders "inter se".

If after payment to one of the joint decree-holders it is contended that there has been a satisfaction of the decree to the extent of the share of the decree-holder receiving the payment, the judgment-debtor raises a question not between the parties to the suit or other representatives arrayed on opposite sides but substantially raises a dispute between the parties arrayed on the same side. The executing Court is not competent to decide such a dispute, because it is a question which is essentially foreign to the nature of the execution proceedings. An executing Court cannot be asked to decide a question as to the shares which should be assigned to the individual decree-holders under a joint decree when

the decree has not made any such provision. If the executing Court is asked to launch upon such an enquiry and does so proceed to make the enquiry it would in effect be deciding a suit for partition between the joint decree-holders with reference to the property, which is the subject-matter of the decree primarily, and incidentally with regard to other property held jointly on the same tenure or relationship as the property which is the subject-matter of the decree."

(6) In our opinion, the view taken by Mr. Justice Shah is correct. The essence of the matter is that the decree sought to be executed is a joint decree and has to be executed as such. If the shares of the decree-holders are apparent on the face of the decree either expressly or by necessary implication, it is not strictly speaking a joint decree. In such a case, as Mr. Justice Shah has pointed out, each decree-holder can take out execution in respect of his own share. But where the shares of the respective decree-holders are not apparent on the face of the decree, either expressly or by necessary implication, the decree which is sought to be executed is a joint decree, and the judgment-debtors must render satisfaction to the whole body of the decree-holders. Where one of the decree-holders is authorised to receive payment on behalf of all, the payment to him is obviously payment to the whole body of the decree-holders. But save in such cases, satisfaction must be rendered to the whole body of the judgment-creditors.

Mr. Kavalekar sought to rely upon the provisions of Order 21, Rule 15, under which one of the several decree-holders is permitted to seek execution of the whole decree for the benefit of all, and the Court is required to make such orders as it deems necessary for protecting the interests of the persons who have not joined in the application. He suggested that the Court in the present case should, under Sub-rule (2) of Rule 15 of Order 21, make an order protecting the interests of Manoranjan by holding that the decree has been satisfied to the extent of Mano-ranjan's share by receiving payment to the extent of Rs. 23,574. In our opinion, this is a wrong construction of Order 21, Rule 15. The Court is required to make such orders as it deems necessary for protecting the interests of decree-holders who have not joined in the application, if execution of the whole decree is sought (and is allowed for the benefit of them all) by one or more of the joint decree-holders. Normally, a joint decree must be executed by all the decree-holders. A special exception has been made under Order 21, Rule 15, permitting one or more joint decree-holders to seek execution of the decree. But in such a case, the execution must be of the whole decree and for the benefit of all. Even then a discretion is left to the Court whether to allow such execution or not at the instance of one or more of several joint decree-holders. But if the Court does allow the execution of the whole decree for the benefit of all decree-holders, then the Court is bound to make some provision for protecting the interests of the persons who have not joined in the application.

The point of the rule is that the "whole" decree is allowed to be executed for the benefit of them all at the instance of one or more of several joint decree-holders. If the whole decree is allowed to be executed for the benefit of them all, the

Court has to make orders for protecting the interests of those who have not joined in the application. This it can do by taking security in respect of what is roughly computed to be the share of the decree-holders who have not joined in the application. But what Mr. Kavalekar asks us to do in this case is not to allow plaintiffs 1A and 1B to execute the whole decree, but to compel them to seek execution only in respect of their own share, which is quite contrary to what is contemplated under Order 21, Rule 15. An order for protecting the interests of the persons not joining in the application for the execution of the decree can be made only when the decree as a whole is permitted to be executed for the benefit of all; and so far as we can see, Order 21, Rule 15, does not contemplate splitting up of a joint decree into one in favour of individual decree-holders in respect of their own shares. Such a procedure would mean permitting an executing Court to go behind the decree as such.

(7) Mr. Justice Shah has also taken the view that ascertaining the respective shares of the decree-holders in a joint decree is foreign to the nature of execution proceedings. In our opinion, this view is correct. Mr. Kavalekar sought to rely on the provisions of Section 47, Civil P. C. which defines what questions could be determined by the Court executing a decree. The executing Court has to decide, under that section, all questions relating to the execution, discharge or satisfaction of the decree. In asking the Court to ascertain what the respective shares of joint decree-holders in a particular decree are, the Court in effect is asked to determine the rights of the parties as in a partition suit between the joint decree-holders. It is true that, incidentally, determination of such a question would be a point in relation to the execution, discharge or satisfaction of a decree. But primarily, the Court is asked to ascertain the rights of the respective joint decree-holders in the decree itself. In our opinion, Mr. Justice Shah is right in saying that such a procedure would in effect amount to deciding "a suit for partition between joint decree-holders with reference to the property in the suit which is the subject-matter of the decree primarily, and incidentally with regard to the other property held jointly on the same tenure or relationship as the property which is the subject-matter of the decree."

(8) One can easily see what difficulties would arise if any other view was taken. Supposing in the present case the judgment-debtors were solvent only to the extent of about Rs. 22,000, would it be right to permit them to pay the whole amount to one decree-holder of their choice and then contend that the decree should be held to be satisfied with respect to that decree-holder's share and that the other decree-holders should be compelled to seek execution in respect of their own shares when the defendants have nothing whatever in their possession to satisfy that decree with. The Rs. 22,000 should be available to all the decree-holders, and it should not be within the competence of a judgment-debtor to select any one of the joint decree-holders with whom he may be in collusion to satisfy him alone and leave the other decree-holders to whistle for their own money. Again, it would be quite wrong to ascertain the respective shares of the decree-holders in the decree itself. If a partition suit were to be brought as

between the decree-holders, the decree would undoubtedly be a joint asset which would be a subject-matter of a division. In a partition suit, every person does not get his own share in each bit of the joint property.

In an equitable partition, the rights and liabilities of all the persons seeking partition have got to be determined. It may turn out, for instance, in this case that Manoranjan has received credit for his share of the family property in some other way with the result that his share in the decree could be deemed to be satisfied in that manner. Under such circumstances, Manoranjan would not be entitled to get any share in the proceeds of the decree. In a partition suit all the rights and liabilities of the parties are determined and then an equitable partition is made. It would not be right to allow one of the decree-holders to get his share in the decree irrespective of what his other rights and liabilities may be in respect of the whole of the property belonging to the family. Yet this is what Mr. Kavalekar asks us to do in this case by saying that Manoranjan's share in the decree should be deemed to be satisfied and that plaintiffs 1A and 1B should be allowed to execute the decree only in respect of their own share. We are, therefore, of the opinion that the view taken by Mr. Justice Shah is correct, viz., that payment to Manoranjan who was one of the joint decree-holders could not be regarded as being a "pro tanto" satisfaction even in respect of his own share in the decree and that the remaining decree-holders Manekbai and Chandrashekhar are entitled to execute the whole decree. It is true that this view may result in double payment having to be made by the judgment-debtors, but for that they have no one else to thank except themselves, and if they have to make such double payment, they may be in a position to recover from Manoranjan the amount which they wrongly paid to him.

(9) There is no reported authority of our own Court on the point which we have to consider? But Mr. Kavalekar has invited our attention to several decisions of other High Courts in support of his contention that the payment to one of the joint decree-holders should be regarded as a "pro tanto" satisfaction of at least that decree-holder's share in the joint decree, so that the other decree-holders can execute the decree only in respect of their own share. There have been two decisions of the Allahabad High Court to which our attention was invited by Mr. Kavalekar.

In -- "Tammen Singh v. Laehhmln Kunwari", 26 All 318 it was held that "One of the two joint holders of a decree u/s 88. Transfer of Property Act cannot alone certify satisfaction of the whole decree so as to bind the other decree-holder, though he may certify satisfaction in respect of his own interest therein."

Where one of such decree-holders purported to certify satisfaction of the whole decree, it was held "

".,.... that the other decree-holder, who had refused to recognise the certificate, was entitled to obtain an order absolute for sale of the mortgaged property in respect of his own share of the mortgage debt." It appears, however, from the

judgment that there was no dispute in that case as to the extent of the shares of the two decree-holders. Where there is no dispute as regards the respective shares of the joint decree-holders, and where such shares are apparent on the face of the decree, then there would be no objection to satisfaction being entered in respect of the shares of the individual decree-holders, and the decree-holder whose share in the decree was not satisfied could proceed to execute the decree in respect of his own share. This case, therefore, is no authority for the proposition that payment to one of the joint decree-holders necessarily amounts to a "pro tanto" discharge of his own share in the joint decree, so that the other decree-holders could be compelled to seek execution only in respect of their own share.

In -- "Umrao Beg v. Mukhtar Beg", 45 All 401 plaintiffs obtained a decree against one defendant in respect of the costs. The defendant paid the whole amount of the costs awarded to one of the plaintiffs who was his sister and she certified to the Court that she had received the full amount of the costs awarded. On an application being made by the remaining plaintiffs for the execution of the entire decree for costs, it was held that the payment of the full amount of the costs to one only of the joint decree-holders and the certifying of such payment to the Court was no defence to the application of the remaining plaintiff's, which was granted to the extent of their share of the costs. In the course of the judgment it was observed (p. 402): ".....It also follows that no one of the decree-holders is competent to grant full discharge of the decree out of Court, or to certify to the court complete satisfaction of the decree, without the concurrence of all the decree-holders. So far the decision of the court below is correct. If the judgment-debtor has really paid the entire amount of the decree to his sister, but has done so with the obvious intention of evading the provisions of Order 21, Rule 15, Civil P. C., he must take the consequences if the result is in fact to compel him to pay the whole amount of the decree, or any part thereof, twice over."

These observations are in consonance with the view which we take. But the learned Judges then went on to state as follows (p. 402):

".....We have no doubt that this is a wide discretion and that the court so long as it insists upon payment of the entire amount of the decree by the judgment-debtor, has authority to make such adjustment of the rights of the decree-holders "inter se" as it may think equitable and proper. Those rights, however, are the rights under the decree. In the present instance the court below seems to have assumed that if there be a decree in favour of a large number of plaintiffs, it must be understood that they are entitled to divide the money amongst themselves "per capita"... ..We think, however, that the court, without going behind the terms of the decree, or entering into any question which, if it was to be litigated at all as between the plaintiffs, should have been adjudicated upon prior to the passing of the decree and not after, is nevertheless entitled for the purposes of Order 21, Rule 15, Civil P. C. to examine the pleadings and to inform itself as to the precise position -of the plaintiff as they came into court."

It would thus appear that their Lordships of the Allahabad High Court held (1) that the executing Court could not go behind the terms of the decree and (2) that it could not enter into any question which, if it was to be litigated at all as between the plaintiffs, should have been adjudicated upon earlier. The implication therefore is that an executing Court cannot launch upon an inquiry to find out what the respective shares of the various decree-holders are, but it can examine the pleadings to ascertain the precise position of the plaintiffs as they came into Court. This case, therefore, also does not support the proposition of Mr. Kavalekar that an executing Court should embark upon an examination of the rights of the respective decree-holders in a joint decree and then enter satisfaction to the extent of the payment received by one of the decree-holders in respect of his own share in the decree. Thus, both the Allahabad cases appear to have been decided on their own facts and do not appear to support the view for which Mr. Kavalekar has contended.

(10) Two cases of the Patna High Court have been brought to our notice. In -- *Sadho Saran Pande Vs. Mt. Subhadra and Others*, it was held that "It is not open to one of two joint holders of a decree to certify satisfaction of the whole decree so as to bind the other decree-holders." There can be no doubt about this proposition. But the learned Judges also went on to say that "a joint decree-holder may certify satisfaction in respect of his own interest therein." It appears, however, that that decree-holder's interest therein was either apparent on the face of the decree or was not disputed. This is brought put in the other case of the Patna High Court, viz., -- "*Kumaid Kumar Singh v. Amar Nath Singh*", 21 Pat 322. The learned Chief Justice, in referring to the earlier case, pointed out that in that case the two ladies had separated shares in the decree. He observed (p. 327):

"The fact that Subhadra Kuar was entitled to execute the decree for her share shows that she had a definite and separate share in the decree. No member of a joint family can execute for his share of a decree held by the joint family."

He also referred to the view consistently taken by the Madras High Court that a payment of the amount of a decree to one of a number of joint decree-holders cannot be treated as satisfaction of the decree even in part, unless it is admitted by the other decree-holders or unless it is proved that he and the others to whom the money was due owned separate and definite shares in the joint decree. Where the joint decree is owned by a joint family, then payment to one of the members will not operate as satisfaction wholly or in part of the decree or of the share of that particular member in the decree. This view of the Patna High Court supports the view we have taken in the present case.

(11) We have been referred to several decisions of the Madras High Court. The earliest decision is -- "*Sultan Moideen v. Savalayam-mal*", 15 Mad 343. There one of the two joint decree-holders applied for execution of the decree to the full amount. It appeared that the other decree-holder had received a certain sum from the judgment-debtor on account of the decree out of Court, but this

payment had not been certified. It was held: ".....that the payment was valid only to the extent of the share to which the payee was entitled, and that this share having been ascertained and credit given for it, the decree should be executed in favour of the present applicant for the balance."

A direction was accordingly issued to the District Judge to ascertain what was the share due to the person to whom payment had been made by the defendant. The judgment of the Court is a very short one, and it does not appear that the question whether the shares could be ascertained in execution was either raised before the Court or decided by the learned Judges.

(12) The next case to which our attention was invited was the Full Bench decision of the Madras High Court in -- "Periasami v. Krishna Ayyan", 25 Mad 431. The point referred to the Full Bench was this (p. 432): "When there are two or more joint decree-holders, and the execution of the decree is barred by limitation as against one or more of them, whether one who is not so barred owing to minority can execute the decree for the benefit of all or, if not, for his own benefit alone?"

The point, therefore, that come before the learned Judges was one of limitation. But the observations of the learned Chief Justice at page 437 lend support to the view that we take. He says:

"In the present case the decree was a joint decree and it seems to me that it is no longer executable as a joint decree, and I see no reason for holding that, although it is not executable as a joint decree, it is executable "quoad the interest of one of the decree-holders, that is as a decree under which the interests of the joint decree-holders have become severed."

It is thus clear that if a decree could not be executed as a joint decree, as was the case before the learned Judges,--because the execution against some of the decree-holders was barred by limitation--it could not be executed as if the interests of the joint decree-holders were severed and that therefore one of the joint decree-holders who was a minor could not be allowed to execute the decree in respect of his own share. When the execution of the decree as a joint decree becomes impossible, then it cannot be allowed to be executed as if the interests of the joint decree-holders had become severed. This decision supports the view that we take that a joint decree must be executed as a joint decree and not as if it was a separate decree with regard to the respective shares of the joint decree-holders. Mr. Justice Bha-shyani Ayyangar who delivered a separate judgment in that case also lays down the general principle at page 441 of the Report that "payment to one cannot operate as a discharge of the decretal debt of the joint decree-holders, unless such person is authorised by the others to accept such payment in entire or partial satisfaction of the decree." We think that this Full Bench decision of the Madras High Court supports the view that we take. The case of -- "Guruswamy v. Sivanmalai", 56 Mad 316 does not really touch the point which is at issue before us. It only lays down that under Order 21, Rule 15,

one decree-holder can file an application for execution of the whole decree, and the Court in such a case is entitled to hear what the other decree-holders have to say, and if they say that the application of their fellow decree-holder is a fraud, there is nothing, to prevent the Court from disallowing the execution. In -- V.N. Muthuswamy Iyer Vs. V.S. Narasimha Ayyar, it was held that "....One of the joint decree-holders.....cannot give a valid discharge by receiving the decree amount out of Court without the concurrence of the other decree-holders." There can be no disagreement with this proposition. The learned Judges further held that if there are two or more decree-holders, payment must be made to all. But this case also, does not decide the point as to whether such payment operates as a "pro tanto" discharge of the share in the decree of that decree-holder who receives payment.

In -- "Hanumanthappa v. Seethayya and Co.", AIR 1949 Mad 790 there was a decree in favour of a firm. Payment was made out of Court to one partner-decree-holder, and it was held that it binds the other partner-decree-holders provided that the other partner-decree-holders are at liberty to establish special circumstances why such payment should not bind them. The learned Judges held that "...if before the passing of the decree one of the partners, by receiving payment of the debt which is the subject-matter of the suit, can give a valid discharge binding on the other members of the firm, logically there is no reason why he cannot do so after the passing of the decree."

In the course of the judgment they observed that ".....When the decree is merely in favour of two or more decree-holders without anything more appearing on its face, it is necessary to insist upon proof of special agency conferring the right to receive the decree amount on one of them. But when on the face of the decree it appears that the decree is in favour of the firm, that is, in favour of all the partners as such, it is reasonable to imply that the decree itself declares the rights which the partners would have under the general law."

That case merely lays down the proposition that payment to an agent on behalf of all the joint decree-holders is payment to them. This case, therefore, does not establish the proposition advanced by Mr. Kavalekar.

(13) On the other hand, there is one decision of the Madras High Court which is directly in point and which criticises the view taken in --"Sultan Moideen v. Savalayammal", 15 Mad. 343. That case is -- "Pitchakkuttiya Pillai v. Doraiswami Moopanar", AIR 1925 Mad 230, the learned Judge says: "In -- "Sultan Moideen v. Savalayammal", it was held that where payment has been made to one of two joint decree-holders that payment was valid to the extent of the share to which the payee was entitled, and therefore an enquiry was ordered as to the extent of that share. This ruling is certainly not in conformity with the later cases quoted above. I consider that I must follow the later cases and hold that the payment is not valid against even the 1st plaintiff. The decree had to be executed as a joint decree or not at all. Valid discharge of any portion of the debt could only be given by one who could give it for all joint decree-holders, and the 1st plaintiff

could not do that because the discharge so far as the minor plaintiffs were concerned was not valid in law at all. Hence I must hold that the decree has not been at all satisfied."

It would thus appear that the current of the decisions of the Madras High Court is, as pointed out by the learned Chief Justice in -- "Ku-maid Kumar Singh v. Amar Nath Singh", 21 Pat 322 in favour of the view that payment to one of the joint decree-holders does not amount even to a "pro tanto" satisfaction of the share of that decree-holder in the decree.

(14) So far as the Calcutta High Court is concerned, the earliest decision to which our attention has been invited is -- "Tarruck Chun-der Bhattacharjee v. Divendro Nath Sanyal", 9 Cal 831. In that case on an application for execution for the full amount due under a decree by some of several joint decree-holders, the judgment-debtor objected to execution being granted for the full amount of the decree on the ground that he had already paid off a large portion of the money due under the decree to B, one of the joint decree-holders. The payment was made out of Court, but B who claimed to be entitled to a 12 1/2 annas share in the decree certified the payment in the manner prescribed by Section 258, Civil P. C. of 1882, and represented that his claim had been satisfied in full. The other joint decree-holders denied B's right to the 12 1/2 annas share claimed by him, and refused to recognise the payment said to have been made to him. The lower Court disallowed the objection, and granted execution for the full amount of the decree. It was held by the High Court that ".....the Court ought not to recognise payments made out of Court, unless made and certified "for the benefit of all the joint decree-holders of any portion of the decree in excess of that to which the decree-holder so paid is undisputedly entitled." It was also held that ".....a judgment-debtor is entitled to credit for any sum paid "bona fide" to one of several joint decree-holders and duly certified to the Court by the latter, and that the other joint decree-holders cannot execute the decree for more than their own share." The High Court thought that the lower Court was wrong in wholly ignoring the payment certified by the decree-holder B, and that the lower Court should have determined, first, whether the payment to B was a fraud on the other joint decree-holders, and secondly, what amount the latter were entitled to have out of the whole decree, the latter being the main question between the applicants for execution and the judgment-debtor, and as such clearly within the scope of Section 244, Civil P. C. As has been pointed out by Mr. Justice Shah in his analysis of this judgment, the case really is an authority for the proposition that where the payment is certified by one decree-holder for the benefit of all, and when there is no dispute about what the share of that decree-holder is, then the payment would amount to a "pro tanto" satisfaction of the share of that decree-holder, and the other decree-holders cannot execute the decree for more than their own share. Neither of these pre-requisites is present in this case. The payment made to Mano- ranjan has not been certified as being for the benefit of all. Secondly, Manoranjan is not undisputedly entitled to any particular share in the decree.

After having laid down the proposition quoted above, the learned Judges have examined some of the earlier cases of that Court and have come to the following conclusion (p. 836): "The decided cases, therefore, do seem to establish this, that a judgment-debtor is entitled to credit for any sum paid "bona fide" to one of several joint decree-holders, and duly certified to the Court by the latter; and that the other joint-creditor cannot execute the decree for more than their own share."

With respect, we think that this proposition is somewhat contrary to what they themselves have laid down in the earlier part of the judgment. Mere bona fide payment to one of the several joint decree-holders and duly certified to the Court by him is not sufficient unless that payment is made for the benefit of all the joint decree-holders. Secondly, the other joint creditors can execute the decree for more than their own share only if there is no dispute as regards the respective shares of the decree-holders. We think that the proposition which is laid down by the learned Judges at page 836 is much wider than what they intended themselves to lay down in their observations in the earlier part of the judgment. The learned Judges also seem to have had some difficulty in deciding whether the question as to what the shares of the various decree-holders are could be decided in execution. At page 837 they observed: ".....This last question is, no doubt, one that is between Behary Lall and the other decree-holders: and as such may not be one which the Court should decide in the execution proceedings. But it is not necessary to decide whether the Court has jurisdiction to decide the point as between the decree-holder; for it is obviously also a question, and the main question, between the applicants for execution and the judgment-debtors: and as such it clearly comes within the scope of Section 244." With respect we think that it is mainly a question between the joint decree-holders as such, although it may incidentally affect the question of the execution of the decree against the judgment-debtor. What the Court is asked to do in such cases is to ascertain the respective shares of the joint decree-holders in a decree and on such shares being ascertained to consider how far the executing joint decree-holders are entitled to maintain the application for executing the whole decree. It is, therefore, primarily a question of ascertaining the shares of the joint decree-holders and incidentally a question relating to the execution of the decree. The other case of the Calcutta High Court to which our attention was invited is -- Surendra Kumar Vs. Abhay Kumar Das and Others, . It was held in that case: "When there is a joint decree payment to one decree-holder does not amount to an acquittance by all the decree-holders. So where a joint decree for costs does not specify shares of the decree-holder "inter se" and the judgment-debtor pays some amount to some decree-holders out of the Court the application by others for entire amount is not maintainable. The Court should ascertain the shares of the decree-holders in execution proceedings, and the decree-holders receiving more than their due share of the decretal amount cannot certify the amount in excess and the judgment-debtor is not protected in respect of excess paid."

The judgment purports to follow the decisions in -- "Tarruck Chunder v. Divendro Nath" and -- "Umrao Beg v. Mukhtar Beg", 45 All 401. But as we have pointed out, the observations in -- "Tarruck Chunder v. Divendro Nath" do not necessarily support the conclusion arrived at by the learned Judges, and the case of --"Umrao Beg v. Mukhtar Beg" was decided on its own facts, inasmuch as it was a partition suit, and the shares of the respective decree-holders were ascertained from the pleadings without undertaking an independent enquiry for the purpose of ascertaining those shares. With respect, we are not in agreement with the view taken and the order passed in -- "Surendra Kumar v. Abhay Kumar Das".

(15) Our attention was next invited to a decision of the Nagpur High Court in -- "Fatmabi v. Tukabai", ILR (1945) Nag 242. That case only lays down that a payment made to one decree-holder is not binding on the other joint decree-holders. The case does not touch the point as to whether such payment is a good discharge in respect of the share of that decree-holder who receives payment, so that the other decree-holders can maintain the darkhast only in respect of their own share.

(16) Mr. Kavalekar then referred to a judgment of a single Judge of the Lahore High Court in -- "Kaka Ram v. Haveli Ram". AIR 2930 Lah. 814. It was held therein as follows: "Where shares of the decree-holders are not specified in the decree but are not incapable of being determined, payment to one decree-holder gives a valid discharge to the extent of the share of the decree-holder to whom payment is made, and it is open to the judgment-debtor to show that the decree has been adjusted in whole or in part to the satisfaction of the decree-holder."

This decision purports to follow the decisions in -- "Sultan Moideen v. Savalayammal", 15 Mad 343 and -- "Tamman Singh v. Lachhmin Kunwari", 26 All 318. As I have said in discussing these two cases, the decision, in -- "Sultan Moideen v. Savalayammal" is not in consonance with all the subsequent decisions of the Madras High Court and has been criticised in -- "Pitchakkuttiya v. Doraiswami", AIR 1925 Mad 230. The decision in -- "Tamman Singh v. Lachhmin Kunwari" was on its own facts as there was no dispute as regards the extent of the shares of the two decree-holders. Even the learned Judge in the Lahore case -- "Kaka Ram v. Haveli Ram" allowed the execution to proceed because he thought "there may be really no dispute between the joint decree-holders as regards their respective shares" and in directing further enquiry he ordered the lower Court to find out "If there was any objection on the part of Tara Chand to the payment being received by Haveli Ram in respect of his own share, and the decree being regarded as being satisfied to the extent of Haveli Ram's share." The question whether, if there is a dispute, the dispute can be resolved by proceedings in execution was not considered. We do not, therefore, think that this authority is really in support of the proposition advanced by Mr. Kavalekar.

(17) Mr. Chitale for the respondent has invited our attention to the decision of the Judicial Commissioner of Peshawar in -- "Kartar Singh v. Gurdial Singh", AIR

1912 Pes 58. It was held therein that ".....Order 21, Rules 1, 2 and 15 indicate the intention of the Legislature that the execution Court should keep an eye on the way the decree is satisfied and that in the case of a joint decree the interests of all the decree-holders should be protected by the execution Judge. It follows that a joint decree-holder cannot give a discharge for the decretal amount to the detriment and without the knowledge of the other decree-holders:..... The word "decree-holder" in Order 21, Rule 1 although in singular means, all the decree-holders jointly when there are more than one. In the case of joint decree-holders when there is no specification of shares in the decree, one decree-holder cannot separately settle up with the judgment-debtor even so far as his share of the decree is concerned." In the course of the judgment, the learned Judicial Commissioner observed that (p. 59): ".....It will be opening the door to fraud to allow a joint decree-holder to give a discharge even to the extent of his own share." This judgment, therefore, supports the view which we take.

(18) In the result, therefore, our view is supported by the decisions of the Patna High Court; the decisions of the Allahabad High Court can be distinguished; the general trend of the decisions of the Madras High Court is in favour of the view we take; the only decision of the Madras High Court which seems to take a contrary view, viz. -- "Sultan Moideen v. Sava-layammal", 15 Mad 343 is not in conformity with the later decisions of that Court, as pointed out in -- Pitchakkuttiya v. Doraiswami", AIR 1925 Mad 230. The two Calcutta decisions appear to take a different view. The decision of the Nagpur High Court in -- Fatmabi v. Tukabai", ILR (1945) Nag 242 does not consider the question at issue, nor does the decision of the Lahore High Court in --"Kaka Ram v. Haveli Ram", AIR 1930 Lah 814. The decision of the Judicial Commissioner of Peshawar in -- "Kartar Singh v. Gurdial Singh", AIR 1942 Pesh 58 supports the view we take.

(19) We are, therefore, in agreement with the view of Mr. Justice Shah that payment to one of the several joint decree-holders cannot be recognised as a payment to all (unless he is authorised to receive such payment on behalf of all), and does not amount to a "pro tanto" satisfaction even to the extent of what is regarded to be the share in the decree of the decree-holder who receives payment. It is therefore, not correct to say that the remaining decree-holders can maintain the darkhast only to the extent of their own shares in the decree."

(20) The result, therefore, is that we confirm the order of Mr. Justice Shah in First Appeal No. 284 of 1949 and dismiss this Letters Patent appeal with costs.

(21) Appeal dismissed.