Privy Council Appeal No. 71 of 1938
Bengal Appeal No. 23 of 1937

Radhakissen Chamria and others - - - - *Appellants*

v.

Durga Prosad Chamria and another - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 3rd JUNE, 1940

Present at the Hearing:
LORD ROMER
SIR GEORGE RANKIN
MR. M. R. JAYAKAR
[*Delivered by* MR. M. R. JAYAKAR]

The question for decision in this appeal is whether the holder of a certificate under the Bengal Public Demands Recovery Act (Bengal Act III of 1913) who has attached a decree passed in favour of his judgment-debtor and has applied under section 19 of the Act for its execution, is competent, as the representative of the holder of the attached decree, to adjust such decree with the judgment-debtors thereof for a sum smaller than the amount of the decree. The statutory provisions requiring construction in this appeal are contained in Order XXI, rr. 2 and 53 of the Code of Civil Procedure (Act V of 1908) and the said section 19 of the said Act.

Order XXI, r. 2, is in these terms:—

> " (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.
>
> (3) A payment or adjustment which has not been certified or recorded as aforesaid, shall not be recognised by any court executing the decree."

Order XXI, r. 53, is in these terms:—

" (1) Where the property to be attached is a decree, either for the payment of money or for sale in enforcement of a mortgage or charge, the attachment shall be made,—

(*a*) if the decrees were passed by the same court, then by order of such court, and,

(*b*) if the decree sought to be attached was passed by another court, then by the issue to such other court of a notice by the court which passed the decree sought to be executed, requesting such other court to stay the execution of its decree unless and until—

(i) the court which passed the decree sought to be executed cancels the notice, or

(ii) the holder of the decree sought to be executed or his judgment-debtor applies to the court receiving such notice to execute its own decree.

(2) Where a court makes an order under clause (*a*) of sub-rule (1) or receives an application under sub-head (ii) of the clause (*b*) of the said sub-rule, it shall, on the application of the creditor who has attached the decree or his judgment-debtor, proceed to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed.

(3) The holder of a decree sought to be executed by the attachment of another decree of the nature specified in sub-rule (1) 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.

(4) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (1), the attachment shall be made by a notice by the court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, where such decree has been passed by any other court, also by sending to such other court a notice to abstain from executing the decree sought to be attached until such notice is cancelled by the court from which it was sent.

(5) The holder of a decree attached under this rule shall give the court executing the decree such information and aid as may reasonably be required.

(6) On the application of the holder of a decree sought to be executed by the attachment of another decree, the court making an order of attachment under this rule shall give notice of such order to the judgment-debtor bound by the decree attached; and no payment or adjustment of the attached decree made by the judgment-debtor in contravention of such order after receipt of notice thereof, either through the court or otherwise, shall be recognised by any court so long as the attachment remains in force."

Section 19 of the Public Demands Recovery Act is as follows:—

" (1) The attachment of a Civil Court decree for the payment of money or for sale in enforcement of a mortgage or charge shall be made by the issue to the Civil Court of a notice requesting the Civil Court to stay the execution of the decree unless and until—

(i) The Certificate Officer cancels the notice, or

(ii) The certificate-holder or the certificate-debtor applies to the court receiving such notice to execute the decree.

(2) Where a Civil Court receives an application under clause (ii) of sub-section (1), it shall, on the application of the certificate-holder or the certificate-debtor, and subject to the provisions of the Code of Civil Procedure, 1908, proceed to execute the attached decree and apply the net proceeds in satisfaction of the certificate.

(3) The certificate-holder 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."

Appellants (1) and (2) are brothers and respondent (1) (hereinafter called "the respondent") is their stepbrother. Appellant (3) is the mother of appellants (1) and (2).

On 21st June, 1923, the respondent brought a suit (No. 61 of 1923) in the Court of the Additional Subordinate Judge of Howrah against the appellants to recover Rs.11,03,063 and odd. On 19th April, 1926, the suit was decreed on a compromise, on terms that the appellants paid to the respondent Rs.8,61,000, together with interest thereon and certain expenses, out of which Rs.4,25,000 and a sum of money in the hands of the receiver in the suit were to be paid immediately and the balance in eighteen monthly instalments of Rs.35,000 each. The payments were made by appellant (3) as agreed but the respondent, instead of fulfilling the obligation imposed by Order XXI, r. 2 (1) of certifying such payments to the court, applied for execution of the compromise decree, ignoring the payments made up to that time. The appellants thereupon applied to have the said payments recorded as certified under Order XXI, r. 2 (2); but the court, by judgment dated 25th January, 1928, held that the application, save as regards three instalments (totalling Rs.1,05,000) paid within ninety days of the date of the application, was barred by limitation.

In March, 1933, the income tax authorities found the respondent to be liable for a sum of Rs.3,86,000 for arrears of income tax and filed a requisition before the Certificate Officer of Howrah, under the provisions of the said Public Demands Recovery Act, for the recovery of the said amount. The Certificate Officer duly issued a certificate against the respondent for the said amount and in execution thereof, on 1st April, 1933, he attached the said compromise decree under the said section 19, the amount shown on the face of the said decree as being then due to the respondent thereunder being about Rs.3,32,373. On 17th March, 1934, the Secretary of State for India, respondent (2) herein, to whom the said amount of income tax was due, applied, under the Order XXI, r. 53 and under section 19 of the said Act, to the First Subordinate Judge of Howrah for execution of the compromise decree. The respondent, as the original decree-holder, was joined as a party to such proceedings. The Subordinate Judge thereupon directed notice to issue on the appellants and the respondent to show cause why the execution proceedings should not be carried on as applied for by the second respondent.

On 21st June, 1934, the appellants showed cause by filing the present application, in which they alleged that the major part of the money due under the compromise decree had been already paid, that they had approached the Certificate Officer for adjustment of the compromise decree, and contested before him the amount outstanding under it and made certain submissions in regard to it; that the Certificate Officer

thereupon made enquiries and agreed to adjust the decree and accept Rs.1,60,000 in full satisfaction of the amount due under it, provided that the money was paid at once, that the appellants forthwith made payment of the Rs.1,60,000. They therefore prayed that the adjustment and full satisfaction of the compromise decree be recorded and the application of the second respondent for execution thereof be dismissed.

On 27th June, 1934, the respondent, in pursuance of the notice served upon him as stated above, showed cause in a substantive application, urging certain contentions which gave rise to a case heard together with the present one and decided against the respondent in the first court and not pressed on appeal to the High Court. It is therefore unnecessary to consider this part of the case. On 30th July, 1934, a further petition of objection was filed by the respondent in opposition to the appellants' application for recording the adjustment of the compromise decree. He urged in this application that the amount due under the compromise decree was more than Rs.3,60,000, that, under the law, an attaching decree-holder had power only to execute the attached decree, but not to adjust it by acceptance of any amount less than the exact dues under the decree and that the adjustment appeared to be a collusive transaction between the appellants and the second respondent.

On 28th January, 1935, the Subordinate Judge gave his judgment. He held that the second respondent had in fact accepted the sum of Rs.1,60,000 in full satisfaction of the compromise decree, that the effect of the said section 19 read with the said rule 53, of Order XXI, was to place the attaching creditor in the same position as the decree-holder for all purposes and that the second respondent was therefore within his rights when he, through his agent the Certificate Officer, granted full satisfaction of the compromise decree. He further held that the question whether the said adjustment was brought about by collusion, as alleged by the respondent, was outside the scope of the proceedings before him. He therefore allowed the appellants' application and directed that the adjustment and full satisfaction of the compromise decree be recorded and the execution case dismissed as on full satisfaction.

The respondent appealed to the High Court. Nasim Ali and R. C. Mitter JJ. heard the appeal and, on 9th April, 1937, Nasim Ali J. delivered the judgment of the court. He agreed with the Subordinate Judge that the second respondent had adjusted the compromise decree. The real question for determination was, he said, whether the second respondent, as the attaching creditor of the compromise decree, had the right at law to adjust it at the date of the adjustment in the manner alleged by the appellants. The learned Judge observed that as the compromise decree was not passed in his favour, he was not a " decree-holder " within the meaning of Order XXI, r. 2; that on a proper construction of r. 53 of the said Order and section 19 of the said Act, the meaning of the words " representative of

the holder of the attached decree", occurring in both these provisions, was limited by the words immediately following and that the rule meant that the attaching decree-holder was "deemed to be" such representative for the limited purpose of executing the decree, i.e., enforcing it by process of the court and of satisfying his own decree out of the proceeds of such execution. He was not a representative of the original decree-holder for all purposes. Such a construction of the rule, he thought, would seriously prejudice the original decree-holder by enabling the attaching decree-holder to accept, in satisfaction of the attached decree, a lesser amount than was due under it and thereby keep his claim under his own decree alive to the extent of the balance. The learned Judge further observed that the provisions of section 146 of the Code of Civil Procedure did not make any difference. His conclusion was that the second respondent had no right to adjust, in the manner pleaded by the appellants, the compromise decree attached by him and that the adjustment could not therefore be recorded under Order XXI, r. 2. The result was that the appeal was allowed and the appellants' application for recording the adjustment and satisfaction of the decree was dismissed. Mitter J. agreed with these conclusions. A decree was drawn accordingly.

From this judgment and decree this appeal has been preferred to His Majesty in Council. In their Lordships' opinion the question must primarily depend upon the interpretation of clause 3 of the said section 19, taken in the light of a similar provision occurring as clause 3 of Order XXI, r. 53. This latter clause is a new provision, introduced for the first time in the present Code of Civil Procedure (Act V of 1908). It was apparently intended to give effect to decisions which arose under the old Civil Procedure Code (Act XIV of 1882) on the interpretation of the term "representatives", occurring in section 244 (*c*) of that Code. The latter section is the predecessor of section 47 of the present Code and provides that certain questions mentioned therein, arising between parties to the suit in which the decree was passed and their "representatives", shall be determined by the court executing the decree and not by a separate suit. The question arose whether an attaching decree-holder was a representative within the meaning of section 244 (*c*) and in a series of decisions it was held that he was a representative for the purposes of section 244. See, e.g., *Sah Man Mull* v. *Kanagasabhapathi* (1892), 16 Mad. 20, *Krishnan* v. *Venkatapathy Chetty* (1905) 29 Mad. 318. It is thus clear from this antecedent history of clause 3 of rule 53 that the representative character of the attaching decree-holder is limited to matters in execution of the decree.

This is also the inference suggested by the context of clause 3. Immediately following the words "representatives of the holder of the attached decree", occurring in clause 3 are the words "and to be entitled to execute such attached decree in any manner lawful to the holder thereof." The words "deemed to be", which occur in the clause,

suggest a legal fiction of a twofold character with regard to the attaching decree-holder: (1) the law regards him as the representative of the holder of the attached decree, and (2) as a consequence of this fiction, the law clothes him with the same rights as the decree-holder has to execute the decree against the original judgment-debtor. Two things are clear from this context, that he is a representative only by a legal fiction and that too for the purpose of lawfully executing the decree, i.e., enforcing it by process of the court and satisfying his own decree out of the proceeds of such execution. Similarly, the clause immediately preceding clause 3 refers to the right of the attaching creditor to " proceed to execute the attached decree and apply the net proceeds in satisfaction " etc. As the analogy only arises by legal fiction, it must be limited to the purposes indicated by the context, and cannot be given a larger effect. In their Lordships' opinion, the context as explained above is vital, and indicates that the intention of the legislature was not to clothe the " representative " with all the rights of the holder of the attached decree in the sense of making him an assignee of such rights. This view gains further support from the other wording of rule 3. It does not say that the attaching decree-holder will be " deemed to be " the " holder of the attached decree." This would certainly have been a simpler way of stating the intention of the legislature if it was to clothe the attaching decree-holder with all the rights of the holder of the attached decree as if he was his assignee. If the certificate-holder in section 19 or the attaching decree-holder in r. 53 were intended to be the full assignees of the rights of the certificate-debtor or of the holder of the attached decree, one would not expect to find the latter's rights preserved for certain purposes, as they are in clause (1) (ii) of section 19 and clause (1) (*b*) (ii) of r. 53. These clauses provide for the right of the certificate-debtor or of the holder of the attached decree to intervene and apply to the court to execute its decree, under certain circumstances. Clauses 4, 5 and 6 of Order XXI, r. 53, are not reproduced in the provisions of section 19 of the Public Demands Recovery Act and there is in that Act a later section, No. 26, which provides that the balance of the amount recovered by attachment shall be paid to the certificate debtor.

For all these reasons, it appears to their Lordships that the intention of the legislature was to make the certificate-holder, by a legal fiction, the representative or agent of the holder of the attached decree for the limited purpose of executing the decree, i.e., enforcing it by process of the court and of satisfying his own decree out of the proceeds of such execution. He was not to be an assignee of the decree, so as to acquire all the rights of the original decree-holder in the decree. Their Lordships are in agreement with the observations in *Anganna Reddi* v. *Subbaraya Chettiyar* (1930) 53 Mad. 796, 799, where a distinction is drawn between the assignee of a decree and the attaching decree-holder acting as the representative of the original decree-holder under clause 3 of r. 53.

The view of the High Court below as regards the serious prejudice which will be caused to the holder of the attached decree if the opposite interpretation were accepted has considerable force. There is no sound reason shown for placing in the hands of the attaching decree-holder a power to adjust the decree so as to cause prejudice to the holder of the attached decree, e.g., by accepting a smaller sum than is due under the attached decree, crediting such sum in partial satisfaction of his own decree and claiming from his his own judgment-debtor the balance which may be due. The facts which are beyond dispute in this case illustrate how the prejudice can arise. The amount recoverable under the attached decree was over Rs.3,60,000. The attaching certificate-holder settled this for a much smaller amount of Rs.1,60,000 in full satisfaction of that decree and credited only this amount in part satisfaction of his certificate debt of Rs.3,60,000, retaining his right to claim the balance from the respondent, who, but for the adjustment, was entitled to receive under the attached decree the entire sum of Rs.3,60,000.

In the course of the appellants' argument, their Lordships' attention was invited to a few rulings which may be briefly noticed. They do not support the appellants' contention. In the case of *Unao Commercial Bank Ltd.* v. *Mohar Gorind Rai,* A.I.R. 1930, All. 659, no question arose about the power of the attaching decree-holder to adjust the attached decree to the prejudice of his judgment-debtor. In that case, the simple question was whether the attaching decree-holder was a representative of the original decree-holder (his own judgment-debtor), for recovering out of court the amount of the decree under the provision of Order XXI, r. 1 (*b*). It was argued that the power to receive such payment out of court resided, under the terms of the said rule, in the decree-holder only. This argument did not prevail and it was held that under clause 3 of r. 53 of the said Order, the attaching creditor was a representative of the decree-holder and, as such, he was entitled to take the money out of court and certify payment in the same manner as the decree-holder himself could do.

The facts relating to the case of *Ramcharan Singh* v. *Jangbahadar Singh,* as reported in A.I.R. 1924, Patna, 696, do not show that what was called in that case an adjustment of the decree between the attaching decree-holder and the original judgment-debtor was for any amount less than the amount of the attached decree, so as to cause prejudice to the holder of that decree. The only light thrown on this question in the report of the proceedings is in certain remarks of the High Court, when it remanded the case for the purpose of determining whether in arriving at the adjustment there was a conspiracy, as alleged by the holder of the attached decree, between the original judgment-debtors and the attaching decree-holder. There is nothing to show how this issue was subsequently determined. There is no doubt that, as held in that ruling, an adjustment between the attaching decree-holder and the original judgment-debtor does not fall

within the prohibition contained in clause 6 of Order XXI, r. 53, but that does not meet the point which has been raised in this appeal.

The ruling next relied upon is *Brojo Nath Saha* v. *Gaya Sundari Dassya* (1906) 6 C.L.J. 141. This case arose under the old Civil Procedure Code of 1882, in which, as stated above, there was no provision like the one contained in the present clause 3 of Order XXI, r. 53. The point which arose in that decision was whether a petition in which the original judgment-debtor agreed to pay towards the decree a certain sum to the attaching decree-holder constituted an acknowledgment of liability, which, under section 19 of the Limitation Act operative at that time, gave rise to a new period of limitation. The question whether the compromise between the attaching decree-holder and the original judgment-debtor was a valid one was not agitated in that case. Reliance was placed on the fact that the acknowledgment was not addressed to the holder of the attached decree so as to save limitation. In answer to this contention, it was pointed out that the attaching decree-holder was a representative of the holder of the attached decree for the purpose of the acknowledgement and further, that under the explanation to section 19 of the Limitation Act, it was a sufficient acknowledgment for the purpose of saving limitation, although it was not addressed to the person entitled. The case throws no light upon the point now under consideration.

Similarly irrelevant is the case of *Sesha Ayyar* v. *The Tinnevelly Sarangapani Sugar Mill Co. Ltd.* (1907) 30 Mad. 533. In that case, the question arose under the Companies' Act (VI of 1882) and it was held that the court would recognise the attaching decree-holder as a representative of the person holding a decree against the company, for the purpose of proving, in the course of liquidation, for the decreetal debt in the name of the decree-holder and receiving and applying the dividends payable to him in satisfaction of his own judgment debt.

Certain remarks of Bacon V.C. in *Chatterton* v. *Watney* (1881) L.R. 16 C.D. 378 were relied upon. But they do not affect the question raised in this appeal. The judgment in that case proceeds to explain the principle adopted in the English Judicature Act and in the Common Law Procedure Act, regulating what are called garnishee orders. The following observations contained in the judgment were relied on:—" If the judgment-debtor has the means of paying the judgment-debt by getting in debts which are due to him, he shall no longer have the power himself of getting in the debts, but they shall be the property of the judgment-creditor to the extent of the amount for which he has recovered judgment." The principle underlying these observations has found qualified acceptance in the several clauses of Order XXI, r. 53; but there is nothing in these remarks which can lend support to the present contention of the appellants.

Reference was made in the argument of the appellants' counsel to the circumstance that in this case the attaching decree-holders' claim was larger than the amount of the attached decree. That, in their Lordships' opinion, will make no difference to the principle involved in this case.

Their Lordships are therefore in agreement with the view of the High Court that the second respondent had no right to adjust the attached decree in the manner pleaded by the judgment-debtor and that the adjustment cannot be recorded under Order XXI, r. 2.

There is, however, one matter in which the view of the High Court requires correction. It was contended before the High Court, that the interpretation which the High Court and the Board have placed on the material sections would have the effect of depriving the judgment-debtor of his right to pay off the judgment-debt amicably out of court and thereby prevent execution. The High Court appears to have been of opinion that it would have this effect and that the remedy lay in the judgment-debtor paying the decreetal amount into court, under Order XXI, r. 1 (*a*). Their Lordships do not share this view. They are of opinion that the receipt by the attaching decree-holder of the decreetal amount out of court amicably is only a mode of executing the decree.

In the conclusion of his argument, the appellants' counsel urged that, irrespective of the merits of their appeal, the payment of Rs.1,60,000 which was admittedly accepted by the second respondent in partial satisfaction of his claim, ought to be certified by the certificate-holder and recorded by the court under the provisions of Order XXI, r. 2. Under ordinary circumstances, their Lordships would perhaps have taken a strict view of this contention and negatived it on the ground that, in the appellants' petition of 21st June, 1934, which initiated the present proceedings, they asked only for an order recording the alleged adjustment and satisfaction of the decree and the dismissal, on that account, of the second respondent's application for execution. On perusing the appellants' petition, it is clear that it was not their intention to ask the court to record the payment of the Rs.1,60,000 as a *pro tanto* payment of the decree. Order XXI, r. 2, relates to the certifying and recording of (1) a payment, or (2) an adjustment. The appellants chose the latter course and did not rely upon the payment of Rs.1,60,000 as a partial payment of the decree. Their case was that there was a complete adjustment and satisfaction of the entire decree. Although this is the strict view of the appellants' petition construed as a pleading, their Lordships cannot ignore the previous conduct of the respondent in omitting to fulfil the obligation imposed by Order XXI, r. 2 (1) of certifying payments of very large amounts made by appellant (3) from time to time in satisfaction of the compromise decree. Ignoring these payments, the respondent applied for execution of the decree. Under these circumstances, it appears to their Lordships necessary to protect the appellants from a possible repetition of such behaviour.

They will therefore direct that the payment of Rs.1,60,000 made under the circumstances mentioned in the lower courts' judgments, should be certified and recorded under the terms of Order XXI, r. 2. This order will, of course, be without prejudice to the rights which any party may have in the matter on grounds to which their Lordships' attention has not been called. This direction, however, is in the nature of an indulgence shown to the appellants and will make no difference in the ultimate fate of their appeal.

Their Lordships are therefore of opinion that the appeal should be dismissed and the decree of the High Court confirmed, subject to the direction about certifying and recording the amount of Rs.1,60,000. The appellants will pay the costs of the first respondent; the second respondent will bear his own costs.

Their Lordships will humbly advise His Majesty accordingly.

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In the Privy Council

RADHAKISSEN CHAMRIA AND OTHERS

v.

DURGA PROSAD CHAMRIA AND ANOTHER

DELIVERED BY MR. M. R. JAYAKAR

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