CIVIL REVISION.

Before Costello J.

KALICHARAN SINGHA

v.

BIBHUTIBHUSHAN SINGHA.*

1932

June 8.

Execution—Executing court, power of, to question the validity of the decree.

A court executing a decree cannot go behind that decree and it must take the decree as it stands. Such a court has no power to entertain any objection to the validity, legality or correctness of the decree and cannot go into the question whether the decree was made by a court without jurisdiction, territorial, personal or otherwise.

S. A. Nathan v. *S. R. Samson* (1), *Zamindar of Ettiyapuram* v. *Chidambaram Chetty* (2) and *Kalipada Sarkar* v. *Hari Mohan Dalal* (3) relied on.

Gora Chand Haldar v. *Prafulla Kumar Roy* (4) discussed and distinguished.

Jungli Lall v. *Laddu Ram Marwari* (5) and *Amalabala Dasi* v. *Sarat Kumari Dasi* (6) referred to.

CIVIL REVISION in favour of the decree-holder.

This Rule was obtained by the plaintiff.

The facts are fully set out in the judgment. Arguments have also been fully dealt with in the judgment.

Piyarimohan Chatterji, *Hariprasanna Mukherji* and *Bankimchandra Ray* for the petitioner.

Bijankumar Mukherji for the opposite party.

COSTELLO J. This Rule is directed against an order of the Munsif of Rampurhat, dated the 17th March, 1932. For the purpose of making it clear how that order came into existence, it is necessary to recite certain facts. The present petitioner Kalicharan Singha, on the 6th December 1923, obtained decrees in his favour in eighteen suits which he had

*Civil Rule No. 328 of 1932, against the order of B. Ghatak, First Munsif of Rampurhat, dated March 17, 1932.

(1) (1931) I. L. R. 9 Rang. 480.
(2) (1920) I. L. R. 43 Mad. 675.
(3) (1916) I. L. R. 44 Calc. 627.
(4) (1925) I. L. R. 53 Calc. 166.
(5) (1919) 4 Pat. L. J. 240.
(6) (1931) 54 C. L. J. 593.

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brought against a lady named Kiranbala and another lady named Bindubashini. A number of different *bargâdars* holding under them were also defendants in the suits. The suits were for the recovery of *khâs* possession and mesne profits in respect of a two-third share in certain properties, the plaintiff's right to that two-thirds share having already been established in antecedent litigation. It is to be observed that in those eighteen suits both Kiranbala and Bindubashini appeared and made various defences to the plaintiff's claim. The decrees having been made in favour of the plaintiff, the defendants appealed and ultimately the matters in issue between the parties came before this Court, in Second Appeal, and the original decrees were affirmed by this Court on the 9th August, 1928, it being declared that the paintiff was entitled to the possession which he was claiming and also to mesne profits at the rate of Rs. 4 until recovery of possession.

Early in the year 1929, the present petitioner Kalicharan Singha, as the decree-holder in the eighteen suits, applied for execution of those decrees and as a result of the execution proceedings he obtained *khâs* possession of the lands claimed by him; but the matter of payment of the amount awarded by way of mesne profits was not proceeded with at that time, as negotiations were opened between the parties with regard to the payment of the mesne profits and costs. Eventually the execution proceedings aforementioned came to an end for want of prosecution. The parties, however, did not come to any settlement in the matter of the mesne profits and accordingly Kalicharan Singha, on the 10th November, 1930, instituted eighteen fresh execution cases and these are the cases out of which the order now complained of arises. Those cases were described as Title Execution Cases Nos. 117 to 134 of 1930 in the First Court of the Munsif of Rampurhat and in them the petitioner as decree-holder sought to recover mesne profits at the rate awarded to him for the period of three years prior

to the institution of the suits and up to the date of delivery of possession. In those execution cases, Kiranbala, as one of the judgment-debtors, lodged objections under section 47, Code of Civil Procedure, and the whole matter was then registered as Misc. Judicial Case No. 37 of 1932. Kiranbala's objection took the form of an allegation that the decrees could not be put to execution, because the amount due under them in respect of mesne profits had already in effect been paid upon an adjustment between the parties. The objection was eventually dismissed in default of prosecution. Subsequently (according to the statements made by the petitioner in his present petition) a man named Surendranarayan Singha, who is said to be the reversionary heir of Shyamacharan, the husband of Kiranbala, and who had been looking after and managing her affairs and conducting all the litigation on her behalf, caused his sister Bindubashini (who as already mentioned was one of the defendants in the original suits), together with one Susheelasundari, the widow of his predeceased brother Ashutosh Singha, to institute proceedings in lunacy (numbered 14 of 1931) under the provisions of Act IV of 1912, in the Court of the District Judge, Murshidabad, praying that the judgment-debtor Kiranbala should be adjudged a lunatic and also praying for the appointment of Surendranarayan as guardian of her person. At the time when the order now complained of was made, the lunacy matter was still pending, though one Bibhutibhushan Singha, a pleader practising at Berhampur, had been appointed *interim* receiver of the estate of Kiranbala. Bibhutibhushan Singha, as such receiver, on the 15th January, 1932, put forward a further objection in the eighteen execution cases under section 47 of the Code of Civil Procedure, alleging therein that Kiranbala had been a lunatic and of unsound mind from a time long antecedent to the institution of the eighteen suits brought against her by the present petitioner and that, therefore, all the decrees, made

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in those eighteen suits, including apparently the final decrees made by the High Court, were made without jurisdiction and void, inasmuch as the judgment-debtor Kiranbala had not been properly "represented" as a lunatic at the time when those decrees were made. It appears that, since the date of the order now complained of, that is to say, on the 21st April, 1932, the lunacy proceedings have been determined. Kiranbala has been adjudged a lunatic and Bibhutibhushan has been appointed permanent manager of her property. The objections lodged by Bibhutibhushan were registered as Misc. Judicial Cases Nos. 37 to 54 of 1932 and, upon those cases coming on for hearing, the petitioner Kalicharan Singha, as the decree-holder in the original suits, out of which the execution and miscellaneous judicial cases arise, contested the objection put forward by the manager, on the ground *inter alia* that the validity of the original decrees could not be challenged in the execution cases and he contended that the decrees were valid and binding on Kiranbala and that the executing court was not competent to enter upon any investigation into the question of whether or not Kiranbala was a lunatic at the time when the decrees were made. The present petitioner further contended that the objection put forward by the manager could not be put forward by him, as such, under section 47 of the Code of Civil Procedure, in execution proceedings, and that it was one that could only be raised by way of a suit. These contentions of the present petitioner as decree-holder were overruled by the learned Munsif of Rampurhat by his order dated the 17th March, 1932, that is to say, the order now complained of, and he decided that the petitions made by the manager were maintainable under section 47 of the Code of Civil Procedure and he fixed the 9th April, 1932, as a day for taking evidence to enable himself to come to a finding as to whether or not the judgment-debtor Kiranbala was of unsound mind at the date of the decrees in the original suits.

The main question which I have to determine, is whether it was right for the learned Munsif to take it upon himself to go into the question of whether or not the eighteen decrees originally made on the 6th December, 1923, even though they were affirmed by this Court on the 9th August, 1928, were valid and binding on Kiranbala. In my opinion, the law is broadly speaking that a court executing a decree cannot go behind that decree and it must take the decree as it stands. Such a court has no power to entertain any objection as to the validity of the decree (even if the decree is said to have been obtained by fraud) or as to the legality or correctness of the decree. There are a number of reported cases giving ample judicial authority for those propositions and I do not propose to refer to them in detail. The reason for that legal position is that a decree, even though it may not be according to law, is binding between the parties, unless and until it is set aside by way of appeal or revision or, if it has already been dealt with by way of appeal or in revision, then by an appropriate suit brought for the express purpose of questioning the validity of the decree. It seems to me difficult to say that the court charged with the duty of executing a decree can even go into the question of whether that decree was made by a court without territorial jurisdiction having regard to the terms of section 21 of the Code of Civil Procedure, which says:

> No objection as to the place of suing shall be allowed by any appellate or revisional court unless such objection was taken in the court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

If no objection as to the territorial jurisdiction of the court trying the case is to be allowed by any appellate or revisional court, *a fortiori* the matter cannot be canvassed before the court which is merely concerned with the execution of the decree after it has been made. See per Wallis C. J. in *Zamindar of Ettiyapuram* v. *Chidambaram Chetty* (1). There is,

(1) (1920) I. L. R. 43 Mad. 675, 687.

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however, on this point a decision of the Full Bench of this Court—in the case of *Gora Chand Haldar* v. *Prafulla Kumar Roy* (1)—and the learned Munsif, in making the order now challenged, seems to have misinterpreted the effect of that decision and also to have relied on the case of *Jungli Lall* v. *Laddu Ram Marwari* (2), where it was held that the proposition that an enquiry into the validity of a decree is outside the functions of an executing court, is subject to the proviso that there is a valid decree which it can execute. In *Gora Chand's* case (1) (*supra*) the view taken was that—

> Where the decree presented for execution was made by a court which apparently had not jurisdiction, whether pecuniary or territorial, or in respect of the judgment-debtor's person, to make the decree, the executing court is entitled to refuse to execute it on the ground that it was made without jurisdiction.

Mr. Justice Walmsley, in delivering the judgment of the Court, was, however, careful to indicate that only within these narrow limits is the executing court authorised to question the validity of a decree. In other words, Mr. Justice Walmsley was manifestly of opinion that, except in connection with matters of the kind expressly enumerated by him, an executing court has no jurisdiction to question the validity of a decree sought to be executed. I am bound to say, with all possible respect to Mr. Justice Walmsley and the other learned Judges who subscribed to his judgment, that I think the decision in *Gora Chand's* case (1) is not altogether consistent with the majority of the decided cases upon the question whether or not an executing court can go behind or question the validity of the decree which it is called upon to execute. A large number of those cases were reviewed and discussed by Sir Arthur Page, Chief Justice of Burma, in the case of *S. A. Nathan* v. *S. R. Samson* (3), which was a decision of the Full Bench of the Rangoon High Court. In the course of his very exhaustive judgment, the learned

(1) (1925) I. L. R. 53 Calc. 166. (2) (1919) 4 Pat. L. J. 240.
(3) (1931) I. L. R. 9 Rang. 480, 500.

Chief Justice said, referring to *Gora Chand's* case (1) (*supra*) :

Was it rightly decided ? With all respect to the learned Judges who were parties to it, in my opinion, it was not. No reasons are given in support of the decision, and the law laid down in that case rests solely upon the *ipse dixit* of the learned Judges who decided it. The judgment is one that I do not find it altogether easy to understand. What is meant by the word "apparently" in the passage that I have cited ? Does it mean that where the want of jurisdiction in the decretal court is patent the executing court can question it, but where it is latent, the executing court possesses no such power, and must execute the decree ? But if the fact is that the decretal court had no jurisdiction to pass the decree, I ask, with all due respect to the learned Judges who decided *Gora Chand's* case (1), what difference does it make in principle or as a matter of common sense whether the executing court ascertains that fact by perusing the decree, or after hearing evidence or holding an enquiry ? In my opinion, none whatever. If there was a want of jurisdiction in the decretal court, the fact exists and remains, whether the absence of jurisdiction is apparent or not. Indeed, if it is only a patent want of jurisdiction that can be questioned, the executing court would not be entitled to question the validity of a decree passed against a dead person, for the only documents before the executing court would be those set out in Order XXI, rule 6, and from a perusal of those documents the want of jurisdiction in the decretal court in such a case would not be "apparent"; and it is only after it has been ascertained *aliunde* by evidence or otherwise that the judgment-debtor was not alive, when the decree was passed that it is possible to hold that the decree was made without jurisdiction and therefore, is inexecutable.

With the views expressed in that passage I respectfully agree. The use of the word "apparently" in the judgment in *Gora Chand's* case (1) does indeed create considerable difficulty in the way of understanding the reasons underlying the judgment of Mr. Justice Walmsley, especially as in the case then before the Court there had, it seems, already been a finding of fact affecting the question of jurisdiction. Some light, however, is thrown on the ambiguity created by the use of the word "apparently" as it appears in the judgment in *Gora Chand's* case (1) (*supra*) by a recent decision of this Court given by Mukerji and Guha JJ. in *Amalabala Dasi* v. *Sarat Kumari Dasi* (2), where it was held that the proposition laid down by the Full Bench in *Gora Chand Haldar* v. *Prafulla Kumar Roy* (1) (*supra*) was that an executing court would be competent to refuse to execute a decree only when *on*

(1) (1925) I. L. R. 53 Calc. 166. (2) (1931) 54 C. L. J. 593.

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the face of the decree it would appear that the court which passed it had no jurisdiction. The court then surmounted the difficulty discussed by Sir Arthur Page in the Rangoon case by holding that the expression "the decree" signifies "the decree and the "papers relevant for the purpose of understanding "it". It is to be observed that this decision was given independently of the Rangoon case; and at a time when the report of it had not been published. The Rangoon case decided in terms that—

> A subsisting decree passed by a duly constituted court, that has not been set aside in proceedings by way of appeal, revision, review, or otherwise, is not to be treated as a mere nullity, but is binding and conclusive against the parties thereto duly impleaded in the suit. *** A court to which such a decree has been transferred for execution, must take the decree as it stands and is not entitled to question the validity of the decree on the ground that the decretal court had no jurisdiction territorial, personal or pecuniary, to pass it.

I entirely agree with the reasoning upon which that decision of the Rangoon High Court is based and I think it represents a correct enunciation of the law. But even if the decision of the Full Bench of this Court in *Gora Chand's* case (1) is to be taken as correct and authoritative, that decision, as interpreted in *Amalabala Dasi* v. *Sarat Kumari Dasi* (2) (*supra*), does not cover the exact point now before me and, therefore, constitutes no authority or justification for the order which the Munsif of Rampurhat thought fit to make. The actual decision in *Amalabala Dasi* v. *Sarat Kumari Dasi* (2) (*supra*) on the other hand seems to furnish sufficient authority for holding that the learned Munsif was altogether wrong in making any such order seeing that neither the decrees themselves nor any of the pleadings and other documents forming the record in the original eighteen suits and in the appeals would, on the face of them, have revealed or indeed given the slightest indication of the fact that one of the defendants in the suits was a lunatic (if indeed she was) at the time of the institution of the suits and, therefore, not

(1) (1925) I. L. R. 53 Calc. 166. (2) (1931) 54 C. L. J. 593.

'duly impleaded'. On the contrary, seeing that Kiranbala not only entered appearance in the original suits but actually put in defences to the plaintiff's claims and contested these claims right up to the High Court and in the execution proceedings, any "apparent" irregularity in the constitution of the suits or any defect manifest "on the face" of the proceedings was entirely non-existent. With regard to the question of the powers of an executing court, when a decree has been passed against a person under disability, who was not properly represented in the suit in which the decree was passed, Sir Arthur Page in the Rangoon case said (at page 492) in such circumstances the decree as against the person under disability would be set aside *es debito justitiæ* in a regular suit though he added that—

> It might also reasonably be contended although in the present case it is not necessary to express a definite opinion on the matter, that inasmuch as in the eye of the law such a decree is not a decree which has been passed against a party to the suit the executing court also would be competent to refuse to execute it.

In my judgment, however, it would not be right in law to hold that an executing court has any power whatever of questioning the operative effect of a decree otherwise than within the narrowly circumscribed limits betokened by the judgment of Mukerji and Guha JJ. I am fortified in that view by another decision of this Court which has a direct bearing on the present case. I refer to the case of *Kalipada Sarkar* v. *Hari Mohan Dalal* (1). There it was held that—

> The court, executing the decree must take the decree as it stands and has no power to go behind the decree or entertain an objection as to the legality or correctness of the decree. The validity of a decree cannot be questioned in execution proceedings on the ground that as the lunatic plaintiff was not properly represented by a competent next friend in the suit, no decree for costs would have been made against him. A proceeding to enforce a judgment is collateral to the judgment, and therefore, no enquiry into its regularity or validity can be permitted in such a proceeding. On this principle it can properly be held that a judgment against a person who was *non compos mentis* at the time of the trial and yet was not represented by a legal guardian, is not to be impeached in execution but should be

(1) (1916) I. L. R. 44 Calc. 627, 638.

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reversed or annulled in some direct proceeding taken for the purpose. Such a judgment can be attacked, for instance, by way of an application for review to the court which made it or by way of an appeal or an application for revision to a superior tribunal, or by way of a regular suit in a court of competent jurisdiction, but the court which made the decree cannot, when called upon to execute it, be invited to hold that the decree was erroneously or improperly made.

The matter was very tersely and clearly put in the judgment of Mr. Justice Mookerjee and Mr. Justice Cuming at page 638 of the report, where they said :—

"We are of opinion that the safest course to "follow is to adhere rigidly to the established "principle that every order and judgment, however "erroneous, is, in the words of Lord Cottenham in "*Chuck* v. *Cremer* (1), good until discharged or "declared inoperative, and that the executing court "cannot enquire into the validity, or propriety of "the decree".

That proposition in my view is eminently a sound one and is applicable to the present case.

I accordingly hold that the order made by the learned Munsif was wrong and made without jurisdiction. This Rule is made absolute and the order of the learned Munsif is set aside. The petitioner is entitled to the costs of this Rule—hearing fee two gold mohurs.

Rule absolute.

S. M.

(1) (1846) 2 Phil. 113, 115.