

## ORIGINAL CIVIL.

Before Panckrudge J.

GOURGOPAL DE SARKAR

v.

KAMALKALIKA DATTA.\*

1933

Nov. 15, 21.

*Attachment—Preliminary administration decree, Effect of, on attachments—Attachments by the High Court and the Court of Small Causes, whether stand on the same footing—Code of Civil Procedure (Act V of 1908), ss. 63, 73; O. XX, r. 13.*

Where a preliminary decree has been made in an administration suit, a creditor who has obtained attachment on the judgment-debtor's property prior to the decree is not entitled to priority over other creditors.

*Soobul Chunder Law v. Russick Lall Mitter* (1) followed.

Attachments by the High Court and the Court of Small Causes stand on the same footing. It is not necessary that the Small Causes Court decree should be transferred to the High Court where the execution proceeds are lying.

*Clark v. Alexander* (2) followed.

*Kwai Tong Kee v. Lim Chaung Ghee* (3) followed.

*Gummidelli Anantapadmanabhaswami v. Official Receiver of Secunderabad* (4) referred to.

APPLICATION by Sewchand Bagree, a firm of creditors of the estate Nirmalkanta Datta, deceased, represented by the defendants to obtain rateable distribution of all moneys held by the sheriff among the creditors in terms of the preliminary administration decree already made.

The facts, as set out in the applicant's petition, are as follows:—

On August 12, 1932, one Nirmalkanta Datta, a Christian, died, leaving behind him Kamalkalika Datta, his widow, Khoka Datta, his only son, and Auruna Datta, Purnima Datta and Ira Datta, his three daughters, as his heirs and legal

\*Application in Original Suits Nos. 2442 and 1916 of 1932.

(1) (1888) I. L. R. 15 Calc. 202.

(3) (1928) I. L. R. 6 Ran. 131.

(2) (1893) I. L. R. 21 Calc. 200.

(4) (1933) I. L. R. 56 Mad. 405 ;  
L. R. 60 I. A. 167.

representatives. Among the assets left by the deceased was a policy of insurance for Rs. 15,000 with the Great Eastern Insurance Company, Limited, but the whole estate was not sufficient for payment to all his creditors in full.

Soon after Nirmalkanta's death, one of his creditors, Narendranath Pal filed a suit (No. 1916 of 1932) at the High Court against the heirs and legal representatives of the deceased, namely Kamalkalika Datta and others. Subsequently, on December 14, 1932, another creditor Gourgopal De Sarkar, on behalf of himself and other creditors, filed a suit (No. 2442 of 1932) at the same Court against the same defendants in which he prayed for administration of the estate of the deceased.

On January 9, 1933, the applicants obtained a decree for Rs. 1,883-0-3 in the suit (No. 22298 of 1932) which he had filed in the Court of Small Causes against the said heirs and legal representatives, and, in execution of this decree, on January 19, 1933, attached the insurance money payable by the Great Eastern Insurance Company, Limited, to the heirs of Nirmalkanta.

On May 18, 1933, Narendranath Pal's suit was decreed and, in execution, on May 31, 1933, he also levied attachment on the insurance money for Rs. 4,500 which represented the amount of his decree and estimated costs. In this suit, on June 27, 1933, an order was made directing the insurance company to pay the entire amount payable under the policy to the sheriff.

In the administration suit, on plaintiff's application a receiver was appointed on July 10, 1933, of all properties of Nirmalkanta including the amount payable by the insurance company after deducting from the latter the amount payable to satisfy the decree in favour of Narendranath Pal and the receiver was given liberty to act at once.

Immediately afterwards, on July 11, 1933, the Sheriff at Narendranath Pal's instance attached the

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movable property of the insurance company in execution of the order made on June 27, 1933. On the following day, the attachment was released on the company undertaking to carry out the order.

Thereafter, on July 21, 1933, a preliminary decree was made in the administration suit and the usual enquiries were directed.

On July 27, 1933, certain other creditors of the deceased, namely, Kalipada Biswas, Adharchandra Jha and Biswanath Jha, who had obtained decrees in the Court of Small Causes, applied for attachment of the insurance money. On July 28, 1933, the insurance company, in accordance with its undertaking given on July 12, paid Rs. 14,750 to the Sheriff. It was when attempt was being made by Narendra Pal, Kalipada Biswas and the Jhas to take practically the whole of this amount in satisfaction of their own decrees to the exclusion of all other creditors of the deceased, that the applicants made this application.

*S. M. Bose* for the applicants.

*H. C. Mazumdar, S. C. Ray* and *I. P. Mukherjee* for different creditors supporting the application.

*Pugh* (with him *N. C. Chatterjee*) for Narendra-nath Pal.

*B. C. Ghose* for Kalipada Biswas, Adharchandra Jha and Biswanath Jha.

*J. C. Sett* for the infant defendants.

PANCKRIDGE J. The history of the circumstances which have occasioned this application is set out in detail in the applicant's petition, and there is no need to repeat it.

The question for decision concerns the effect of the preliminary administration decree made on July 21, 1933, in suit No. 2442 of 1932 (*Gourgopal De Sarkar v. Mrs. Kamalkalika Datta and others*), filed by the plaintiff on behalf of himself and the other creditors of Nirmal Datta, deceased. At the date of the decree,

the applicant had attached the insurance money, lying with the insurance company and payable to the heirs of Nirmal Datta, in execution of a decree for Rs. 1,883-0-3 made by the Court of Small Causes on January 9, 1933, the actual date of attachment being July 19, 1933.

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The plaintiff in suit No. 1916 of 1932 (*Narendra-nath Pal v. Mrs. Kamalkalika Datta and others*) had served the insurance company with a garnishee notice for Rs. 4,500 being the amount of his decree in that suit and his estimated costs.

On July 11, 1933, the moveable property of the garnishee proceedings directing payment of the entire policy money (Rs. 15,000) to the Sheriff.

On July 11, 1933, the moveable property of the insurance company was attached by the Sheriff at the instance of Narendra Pal. On July 12, 1933, this attachment was set aside on the company's undertaking to carry out the order of June 27, 1933. Such being the facts, it appears to me that, when the administration decree was made, all the attaching creditors stood on the same footing and that none of them had acquired any interest in the insurance money.

The observations of the Judicial Committee in the recent case of *Gummidelli Anantapadmanabhaswami v. The Official Receiver of Secunderabad* (1) certainly cannot have the effect of overruling the decisions which lay down this principle, and by which I am bound.

In my opinion, the position is not affected by anything that has happened subsequently to the administration decree.

Further, I think that the attachment by the High Court and the Small Cause Court stand on the same footing, and the fact that the Small Cause

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Court decrees have not been transferred to the High Court, and that the money is now lying in the High Court, is of no consequence.

This seems to be the effect of *Clark v. Alexander* (1) which has been followed by the High Court of Burma in *Kwai Tong Kee v. Lim Chaung Ghee* (2). In other words section 73 of the Code of Civil Procedure must be read subject to section 63 of the same Code.

As to the general effect of the administration decree, the circumstances seem to me to be parallel to those in *Soobul Chunder Law v. Russick Lall Mitter* (3), and I therefore consider that, by reason of the provisions of Order XX, rule 13, which reproduce those of section 213 of the Code of 1882, the applicant's contentions are sound.

Mr. Pugh has argued that, as rule 6 of Chapter XVIII of the Rules and Orders provides that payment under a garnishee order is a valid discharge of the garnishee, the company's debt has been extinguished and is no longer part of the estate of the deceased Nirmal. Whatever be the merits of this line of argument, it cannot, in my opinion, have any application where, as here, the administration decree is passed before the payment is made.

The application, therefore, succeeds, but I think that all that is necessary will be done if I make an order in terms of clause (c) of the notice of motion and an order for the payment of the applicant's costs by the second and third parties to the notice.

*Application allowed.*

Attorneys for applicant: *Dutt & Sen.*

Attorneys for other parties: *K. K. Dutt & Co., S. K. Bose, B. N. Sen, P. N. Bose and G. C. Ghose.*

P. K. D.

(1) (1893) I. L. R. 21 Calc. 200. (2) (1928) I. L. R. 6 Ran. 131.

(3) (1888) I. L. R. 15 Calc. 202.