

CIVIL REVISION.

Before Nasim Ali and Henderson JJ.

HEMENDRA NATH RAY CHAUDHURI

v.

EAST BENGAL COMMERCIAL BANK*.

1936

Jan. 20, 30.

Rateable Distribution—Same judgment-debtor—Code of Civil Procedure (Act V of 1908), s. 73.

Where in one decree, the judgment-debtors are described as "On the death of X, his sons and heirs A, B, C and D" and in the other decree they are merely described as "A, B, C and D", all the decrees are against the same man and rateable distribution should be ordered.

Govind Abaji Jakhadi v. Mohoniraj Vinayak Jakhadi (1); Srinivasa Aiyangar v. Kanthimathi Ammal (2) and Jahar Lal Saha v. Lalita Sundari Dasi (3) relied on.

Bhola Nath v. Maqbul-un-nissa (4) and other cases dissented from.

CIVIL REVISION.

The facts of the case appear fully from the judgment.

Atul Chandra Gupta and Gunendra Krishna Ghosh for the petitioner. The mere fact that the decree obtained by opposite party No. 1 was against the judgment-debtors as heirs of their father cannot make the decree against persons, not the same, as the judgment-debtors. *Vide* definition in s. 2 (10) of the Civil Procedure Code. As the decrees are clearly against the same persons, even on the face of them, s. 73 is clearly applicable. *Govind Abaji Jakhadi v. Mohoniraj Vinayak Jakhadi (1); Jahar Lal Saha v. Lalita Sundari Dasi (3) and Hemlata Dasi v. Bengal Coal Co., Ltd. (5)* are clearly distinguishable. *Hart v. Tara Prasanna Mukherji (6)* applies to this case.

*Civil Revision, No. 1582 of 1935, against the order of Basanta Kumar Ray, Third Subordinate Judge of Mymensingh, dated Nov. 4, 1935.

(1) (1901) I. L. R. 25 Bom. 494.

(4) (1903) I. L. R. 26 All. 28.

(2) (1910) I. L. R. 33 Mad. 465.

(5) (1935) 40 C. W. N. 26.

(3) (1929) 34 C. W. N. 294.

(6) (1885) I. L. R. 11 Cal. 718, 728.

1936

*Hemendra Nath
Chaudhuri*
v.
*East Bengal
Commercial
Bank.*

Amarendra Nath Basu and Dwijendra Krishna Datta for opposite party No. 1. The decree obtained by my client was against the debtors in their representative capacity while the other decrees are against them personally. Therefore, rateable distribution should not be granted. *Bhola Nath v. Maqbul-un-nissa* (1); *Toola Ram v. Abdul Gafur* (2); *Munshi Lal v. S. Mohammad Amir Mirza Beg* (3); *Hajee Abdulla v. Alanji Abdul Lathif* (4).

Gupta in reply. The cases cited by Mr. Basu cannot be good law under the new section. The Allahabad case was decided before the Code of Civil Procedure, 1908.

[NASIM ALI J. What is the test of the same person having "double personality?"]

Gunendra Krishna Ghosh. The test is whether the person can have legal relationship with himself in another capacity. In this case the judgment-debtors cannot have any such relationship and therefore the decrees are clearly against the same persons.

Praphulla Chandra Nag and Bansaree Lal Sarkar for other parties.

Cur. adv. vult.

NASIM ALI J. The petitioner and the opposite parties Nos. 6 and 7 obtained certain money decrees against the opposite parties Nos. 2 to 5 personally. The opposite party No. 1 sued them for a debt incurred by their father Prasanna Krishna Shaha and obtained a decree against them on February 13, 1935. In execution of the decree certain properties belonging to Prasanna Kumar have been sold. The petitioner and opposite parties Nos. 6 and 7 applied for rateable distribution of the sale proceeds under s. 73 of the Code of Civil Procedure. The learned Subordinate Judge has rejected these applications. This Rule was, thereupon, obtained by the

(1) (1903) I. L. R. 26 All. 28.

(3) [1919] A. I. R. (Oudh) 326.

(2) [1914] A. I. R. (L. B.) 191;

(4) [1920] A. I. R. (Mad.) 403.

24 Ind. Cas. 476.

petitioner. The opposite party No. 1 opposed this Rule while the opposite parties Nos. 6 and 7 supported the Rule.

The learned Subordinate Judge has rejected the application under s. 73 on the ground that the judgment-debtors in the decree obtained by the opposite party No. 1 are not the same as in the decrees obtained by the petitioner and the opposite parties Nos. 6 and 7.

Now judgment-debtor means any person against whom a decree has been *passed*. [Section 2, cl. (10) of Civil Procedure Code.] The word "person" has not been defined in the Code. The definition of "person" in the General Clauses Act (X of 1897) throws no light on the present question. Person, in law, does not simply mean a human being. There may be persons, in law, who are not human beings, *e.g.*, a joint stock company or a municipal corporation. Again a human being may have a double personality. He may be one man, but two persons in the eyes of law. In order to give a man double personality he must possess two different capacities so that in one capacity he may have legal relations with himself in his other capacity. (Salmond's Jurisprudence, p. 278, 5th ed.)

It is argued on behalf of the opposite party No. 1 that if one decree is obtained against a man as heir of a deceased person and another decree against him in his personal capacity, the two decrees are not against the same judgment-debtors within the meaning of s. 73 of the Civil Procedure Code. This contention is based on a ruling of the Allahabad High Court in the case of *Bhola Nath v. Maqbul-un-nissa* (1), in which it was held that a decree obtained against a man as heir of a deceased person is different from a decree against him in his personal capacity and the two decrees are not against the same judgment-debtor within the meaning of s. 295 of the Code of 1882. This ruling was followed in

1936

Hemendra Nath
Chaudhuri

v.

East Bengal
Commercial
Bank.

Nasim Ali J.

1936

*Hemendra Nath
Chaudhuri*
v.

*East Bengal
Commercial
Bank.*

Nasim Ali J.

Toola Ram v. Abdul Gafur (1); Munshi Lal v. S. Mohammad Amir Mirza Beg (2); Hajee Abdulla v. Alanji Abdul Lathif (3).

The principle underlying the decision of the Allahabad High Court is that the assets of a deceased person are liable in the first place to satisfy the debts of the deceased and subject thereto belong to the heir inasmuch as the debts constitute a general charge upon the assets although such a general charge would not defeat a *bona fide* purchaser or mortgagee from the heir. It was observed in that case that it would be inequitable to make one man's property pay the debt of another. It appears, therefore, that the nature of the liability under the decree was taken as one of the essential conditions for the application of s. 295 of the old Code. In the Code of 1908, for the words "decrees for "money" "the decrees for the payment of money "passed" have been substituted. Now, the provisions of s. 73 of the Code which have replaced s. 295 bearing on the question before me are as follows:—

Where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for execution of decree for the payment of money *passed* against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization shall be distributed among all such persons.

In *Balmer Lawrie & Co. v. Jadunath Banerjee* (4) this Court observed:—

It is essential for the application of the section that the decrees should have been *passed* against the same judgment-debtor. This has been made clear beyond possibility of dispute by the introduction of the word "passed" which did not find a place in s. 295 of the Code of 1882.

In the case of *Govind Abaji Jakhadi v. Mohoniraj Vinayak Jakhadi* (5), Jenkin C. J. observed:—

"It is useless to speculate as to any other test than that which the section" (295 of the Code of 1882) "itself provides, and that test is stated in the "plainest terms. So far as the present case goes, it is enough to say that

(1) [1914] A. I. R. (L. B.) 191 ;
24 Ind. Cas. 476.

(2) [1919] A. I. R. (Oudh) 326.

(3) [1920] A. I. R. (Mad.) 403.

(4) (1914) I. L. R. 42 Cal. 1, 9.

(5) (1901) I. L. R. 25 Bom. 494, 496.

1936

*Hemendra Nath
Chaudhuri*
v.

*East Bengal
Commercial
Bank.*

Nasim Ali J.

that Prasanna Kumar Shaha or his estate is judgment-debtor in the decree of the opposite party No. 1. In view of the principle laid down in *Govind Abaji Jakhadi v. Mohoniraj Vinayak Jakhadi* (1); *Srinivasa Aiyangar v. Kanthimathi Ammal* (2) and *Jahar Lal Saha v. Lalita Sundari Dasi* (3), I am not prepared to hold that the judgment-debtors in the decree of opposite party No. 1 are different from those in the decrees obtained by the petitioner and the opposite parties Nos. 6 and 7. They are the same judgment-debtors within the meaning of s. 73 of the Code.

The Rule is, therefore, made absolute with costs to be paid to the petitioner by the opposite party No. 1. The order of the learned Subordinate Judge rejecting the applications of the petitioner and the opposite parties Nos. 6 and 7 are set aside. The learned Subordinate Judge is directed to distribute the assets rateably amongst the petitioner and opposite parties, Nos. 1, 6 and 7 according to law. The hearing fee is assessed at 3 gold *mohurs*.

HENDERSON J. I agree.

Rule absolute.

(1) (1901) I. L. R. 25 Bom. 494.

(2) (1910) I. L. R. 33 Mad. 465.

(3) (1929) 34 C. W. N. 294.

S. M.