

## ORIGINAL CIVIL.

Before Panckridge J.

1937  
Nov. 26.

PRADOSH CHANDRA BASU

v.

HUGH GORDON.\*

*Execution—Execution of decree—Plaintiff, benāmdār of applicant—Right of applicant to execute.*

A person not a party to the suit, if he can prove that the decree-holder is his *benāmdār*, is entitled to execute the decree.

*Nil Kanta Ghosal v. Ram Chand Roy* (1) followed.

*Abdul Kureem v. Chukhun* (2) referred to.

## APPLICATION for execution.

The facts of the case appear fully from the judgment.

Relevant arguments of counsel also appear sufficiently from the judgment.

*S. K. Basu* for the applicant.

*I. P. Mukerjee* for the judgment-debtor.

PANCKRIDGE J. This is an application by Jatindra Kumar Singha calling upon the defendant to show cause why the decree passed on November 30, 1925, should not be executed against him by the applicant, and why the receiver appointed herein should not sell certain shares as directed by the decree.

The plaintiff Pradosh Chandra Basu obtained a money decree in which was incorporated a declaration that certain shares stood charged with the payment of the defendant's liability. The plaintiff took no steps to execute the decree which was for a sum of

\*Original Suit No. 623 of 1935.

(1) [1928] A. I. R. (Cal.) 835.

(2) (1879) 5 C. L. R. 253.

Rs. 3,800 with interest at 15 per cent. from March 9, 1925, until realisation. The interest strikes me as being at a surprisingly high rate, but as the decree is by consent, that is not a matter with which I am concerned.

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The present applicant seeks to execute the decree on the ground that the plaintiff is his *benâmdâr*, and he states in his affidavit that he advanced the sum in suit in the name of the plaintiff as his *benâmdâr*, and that the advance was the proceeds of a cheque by which he drew Rs. 8,000 from his personal account with Lloyds Bank.

In the affidavit in opposition these facts are not seriously challenged, and correspondence has been put on affidavit which shows that the plaintiff makes no claim to the proceeds of the decree. Moreover, the application is made upon notice to him, and he has not appeared to contest the applicant's claim to execute the decree. In these circumstances, I am bound to find that the applicant's case is true, that the money advanced was the applicant's money, and that the promissory note was given in the name of the plaintiff as the applicant's *benâmdâr*.

The only question therefore is a question of law, whether, when a *benâmdâr* obtains a money decree, the person, whose *benâmdâr* he is, is entitled to execute it.

The notice which is in the customary printed form is not appropriate to the circumstances of this case, for it is in a form which is applicable and has reference to O. XXI, r. 16, that is to say, to cases where the decree has been assigned. There is no question of assignment here. The various authorities to which counsel for the defendant has drawn my attention, all deal with the rights of transferees, and are therefore of small assistance.

It is true that r. 10 of O. XXI refers to the holder of the decree, and does not in terms contemplate a person for whom such holder

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is the *benâmdâr*. But that, to my mind, is not conclusive, because *benâmi* transactions are so well recognised in India that, unless the rights of persons for whom other persons hold *benâmi* are expressly excluded by the words of an enactment, one is justified in supposing that the legislature intended that the Courts should recognise the ordinary incidents of *benâmi*.

Now in this Court there is a direct authority for the proposition that the true owner, if he can prove that the decree-holder is his *benâmdâr*, is entitled to execute the decree.

That authority is *Nil Kanta Ghosal v. Ram Chand Roy* (1). This is not reported in the Indian Law Reports, Calcutta Series, but a report of it is to be found in 1928, All India Reporter, Calcutta, p. 835. I have read the judgment, and the reasoning appears to me convincing, and in my opinion it is a decision which I ought to follow.

Support is also to be obtained for the view which I consider to be the right one in *Abdul Kureem v. Chukhun* (2).

Accordingly the order must be in terms of the application. The applicant is entitled to his costs. Certified for counsel.

*Application allowed.*

Attorneys for applicant: *Akhil Bose & Co.*

Attorney for respondent: *A. N. Das.*

S. M.

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(2) (1879) 5 C. L. R. 253.