

ORIGINAL CIVIL.

Before Sen J.

RADHA NATH DAS

v.

PRODUMNA KUMAR SARKAR.*

1939

May 12, 16.

Assignment of Decree—Recording of assignment—Execution—Procedure for assignee's application for execution—Code of Civil Procedure (Act V of 1908), O. XXI, r. 16.

Under O. XXI, r. 16, of the Code of Civil Procedure the assignee of a decree cannot make two applications, one for recording the assignment and another for executing the decree.

Baijnath Ramchander v. Binraj Joowarmal Batia (1) dissented from.

* There is no provision in the Code of Civil Procedure enabling the assignee of a decree to apply only for recording the assignment.

APPLICATION by the assignee of a decree for recording the assignment.

The material facts of the case and arguments of counsel appear sufficiently from the judgment.

J. N. Majumdar for the petitioner.

S. Chaudhuri for the respondent.

Cur. adv. vult.

SEN J. This purports to be an application under O. XXI, r. 16, of the Code of Civil Procedure. A decree was obtained by one Radha Nath Das against certain persons who were wards of the Court under the Court of Wards Act. Radha Nath transferred the decree to the present applicant, who has now made this application, which he says is in accordance with the provisions of O. XXI, r. 16, of the Code of

*Application in Original Suit No. 227 of 1935.

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Civil Procedure. The manager of the estate of some of the judgment-debtors under the Court of Wards opposes the application on the ground that the Code nowhere contemplates such an application and that the decree cannot be executed by reason of certain provisions of the Court of Wards Act. The summons was taken out before the Master and the petitioner asked for the following reliefs only:—

- (1) that the assignment of the decree in favour of the applicant should be recorded;
- (2) that the applicant should be allowed leave to execute the decree herein;
- (3) that the name of the applicant should be substituted in the record of this suit as assignee of the said decree;
- (4) that the costs of and incidental to this application be costs in the execution proceedings.

When the respondent's solicitor wrote to the solicitor of the applicant stating that he would oppose the application, the applicant's solicitor replied saying that he saw no reason for any opposition inasmuch as the petitioner "as assignee of the decree only wants "to record the assignment and he does not want any "further order in the matter". The words within quotation are from the letter dated August 13, 1937, written by the solicitor for the petitioner to the solicitor for the respondents which is reproduced in para. 4 of the affidavit in reply. This letter and the form of the summons clearly indicates that this is not an application for execution whatever else it may be. An application for execution should be in tabular form as laid down in O. XXI, r. 11. There is no indication here as to how execution is sought. In fact it is admitted before me that this is not an application for execution.

Now, does the Code anywhere provide for an application of this description? It is said that this

is an application under O. XXI, r. 16. That rule is in the following terms:—

Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it, and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder :

Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution.

The Rule is perfectly clear. As I read it, it empowers a transferee of a decree, when the transfer is by assignment, in writing to apply for the execution of the decree and it goes on to say that the decree will be executed in the same manner as if the assignee was the decree-holder. Thereafter the Rule provides that notice of such *application* (*i.e.*, application for execution) shall be given to the transferor and judgment-debtors and that the decree will not be executed until the Court has heard their objection to the execution.

It seems to me to be obvious from the wording of the Rule that there can be no notice to the transferor or judgment-debtor and no hearing of any objection unless and until there is an application for execution. The notice and the entire proceedings under O. XXI, r. 16, originate from an application for execution. If there is no such application the proceedings are without any foundation. Order XXI, r. 16, of the Code nowhere provides for an application to record an assignment or for an application for leave to execute a decree by an assignee or for an application for substitution.

I see no reason to read into the Rule matters which are not there. The procedure prescribed is simple. The assignee must apply for execution and give notice of such application to the transferor and judgment-debtors. These persons will appear and offer such opposition to the application as they think

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proper and the Court will execute or refuse to execute the decree after hearing all objections. There can be no justification for splitting up the matter into two parts and thereby necessitating one application for recording the assignment of the decree and another for the execution of the decree.

The respondent put forward certain grounds to show that the decree could not be executed. The petitioner objected that as there was no application yet for execution these grounds could not be considered. This contention of the applicant really supports my view that the present application is misconceived. There is no reason why the respondents should be made to appear twice—once in an application for recognition of the transfer and once in an application for execution. My attention was drawn by the petitioner to the case of *Baijnath Ramchander v. Binjraj Joowarmal Batia* (1). This case to a large extent supports the view of the petitioner that there should be two applications. With great respect to the learned Judge who decided that case I am not inclined to follow that decision as I feel that there is no justification for reading into O. XXI, r. 16, provision for anything more than a single application for execution of which a notice has to be given.

To give effect to the view urged on behalf of the petitioner would lead to unnecessary expense and in some cases to a futile waste of time. For instance, I may hold on this application that there has been a valid assignment of the decree and in the next application for execution of the decree that it cannot be executed against the judgment-debtors in view of the provisions of the Court of Wards Act. Again it is quite unnecessary for an executing Court to decide anything except from the point of view of execution. An executing Court cannot be asked to pronounce upon the validity of an assignment of a decree except

(1) I. L. R. [1937] Bom. 691.

in connection with the execution of that decree. For these reasons I hold that this application is misconceived and that it should be dismissed with costs. Certified for counsel.

Attorney for applicant: *K. P. Mustaphy.*

Attorneys for respondent: *Sandersons & Morgans.*

Application dismissed.

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