SRI RAJA CHELIKANI VENKATA-RAMANA-YAMMA GARU v. APPA RAU BAHADUR GARU.

To sum up then: We find that the will of 1866 was revoked, that there was no right of survivorship between Niladri and Appa Rao, that on Niladri's death the appellant as his widow succeeded to his property and that the will of 1892 is not genuine. The result of these findings is that in appeal suit 164 there will be a decree for partition and delivery to the appellant of a moiety of the disputed properties including the inam lands in the hands of the second respondent with proportionate mesne profits from 1st December 1892 until delivery of possession or three years from date of decree, the amount thereof to be ascertained in execution. Provided, however, that the following items in schedule C1 shall be excluded:—Nos. 3, 17, 22, 23, 38, 75, 77, 81 and 87; and provided also that Nos. 37, 51, 97, 98, 103 and 121 in the schedule to the Commissioner's report be included. Item No. 7 in plaint schedule C1 should be described as 'a box' only, and item No. 79 in the same schedule should be described as containing only two pearls. In appeal suit No. 165 there will be a declaration that exhibit K is not genuine. In other respects both the suits must be dismissed, the parties will pay and receive proportionate costs in each case in the Lower Court as well as in this Court. The decrees of the Court below will be modified accordingly.

APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Davies.

1895. November 26 1897. February 23

MUTHIA CHETTI (RESPONDENT), APPELLANT,

v

ORR (APPELLANT), RESPONDENT.*

Execution—Receiver—Moneys collected by receiver in execution of decree misappropriated by him—Discharge of judgment-debtor.

In execution of a decree a receiver was appointed to collect certain rents due to the judgment-debtor. Some of the judgment-debtor's tenants paid the rents due by them into the hands of the receiver, but the receiver did not pay the money into Court:

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* Letters Patent Appeal No. 21 of 1895.

Held per Shephard, J., that the payment by the tenants to the receiver did not *pro tanto* discharge the judgment-debtor from liability under the decree.

Held per Davies, J., that payment by the tenants to the receiver *pro tanto* discharged the judgment-debtor from liability under the decree.

APPEAL under section 15 of the Letters Patent against the order of MUTTUSAMI AYYAR, J., in appeal against appellate order No. 63 of 1892(1).

The respondents were the holders of a decree passed in original suit No. 415 of 1884 on the file of the District Munsif of Sivaganga against the appellant and others. A certain portion of the amount due on the decree was collected at various times. On 31st August 1889, on the application of the respondents a receiver was appointed to collect the melvaram payable to the appellant by the tenants of the village of Kambanur for fasli 1299. The evidence showed that the receiver had collected a sum of Rs. 845-2-7. But he did not pay this money into Court and absconded. The respondents then in April 1891 put in another application for the execution of the decree praying for the arrest and imprisonment of the judgment-debtor and the attachment and sale of his movable properties. In this application the respondents did not give the appellant credit for the sum of Rs. 845-2-7 collected by the receiver. The appellant opposed the issue of execution on the ground that the decree debt had been satisfied by the sum collected by the receiver.

The Munsif and on appeal the District Judge allowed the appellant's contention.

On appeal to the High Court MUTTUSAMI AYYAR, J., reversed the order of the District Munsif and the District Judge.

The appellant now appealed under section 15 of the Letters Patent.

Mr. *Johnstone* for appellant.

Mr. *Ryan* for respondent.

SHEPHARD, J.—The point raised by this appeal is one on which authority is naturally scanty, because it could hardly arise if ordinary care were taken. It seems that, in execution of a decree obtained by the respondent, a receiver was appointed to superintend the harvest and collect the melvaram payable to the appellant. It

(1) I.L.R., 17 Mad., 501.

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is not explained why such an expensive and cumbrous way of executing an ordinary decree was adopted. The receiver thus appointed apparently was not required to give, and, anyhow, did not give the security which the 503rd section of the Code requires. He collected certain moneys on account of melvaram, but instead of paying them into Court, misappropriated them and absconded. A fresh application having been made for execution, the appellant met it by claiming credit for the moneys so collected, but not paid into Court. The question is whether the appellant, the judgment-debtor, or the respondent, the decree-holder, must bear the loss occasioned by the defalcation of the receiver. Mr. Justice Muttusami Ayyar reversing the order of the Courts below has decided the question in favour of the decree-holder, and I have arrived at the same conclusion. Such authority, as there is, is in favour of it, although it must be admitted that the circumstances of Lord Massareene's(1) case were quite different from those of the present case. The case is one which cannot be decided upon any theory of agency. A receiver appointed to collect moneys is not an agent of either party; he is an officer of the Court deputed to collect and hold the moneys collected by him in accordance with the orders of the Court. The party at whose instance a receiver is appointed has no greater or less control over his acts than the other party to the litigation. It is by the Court only that he can be dismissed as well as appointed. The argument on behalf of the appellant was to the effect that, as he or the tenants indebted to him were bound to pay the melvaram to the receiver, so a payment by them must *pro tanto* operate as a complete discharge. Unless such discharge and satisfaction of the decree was effected by the payment, the appeal must clearly fail. What then is there in the provisions of the Code to justify us in holding that a judgment-creditor must be deemed to be satisfied by the mere fact of a receiver getting in moneys due to the judgment-debtor? The ordinary right of a judgment-creditor is to have the amount of his debt paid into his own hands. As to that proposition, I apprehend there can be no doubt; see *Soobul Chunder Law* v. *Russick Lall Mitter*(2). The money may be paid out of Court immediately to the judgment-creditor or it may be paid into Court and taken out by him. Then only is he bound to certify to the Court under

(1) *Hutchinsen* v. *Massareene*, 2 Ba. & Be., 49. (2) I.L.R., 15 Calc., 202.

section 258 the fact of payment. There is a special provision in the 336th section of the Code entitling the debtor to personal release on his paying the money to an officer of the Court, and there is a similar provision in the 341st section for the case of a debtor in jail paying the money to the officer in charge of the jail. But in the latter section it is expressly declared that a discharge under it does not operate as a discharge of the debtor from his debt. It is a personal discharge only. These provisions, which were relied upon by the appellant's counsel, so far from supporting his argument, rather indicate that, as a general rule, the receipt of money by an officer of the Court is not by itself a good discharge. Payment into Court by the judgment-debtor stands on a different footing. It is expressly recognized by the 257th section, and a debtor, who, on his debt being attached under the 268th section pays the money into Court, is discharged as effectually as if he had paid it to his creditor. In the present case we are not concerned with any question as to the discharge of a third person, nor with the case of a payment made by the judgment-debtor. The money which came to the receiver's hands was collected by him from persons who were indebted to the judgment-debtor. There was no payment by the judgment-debtor either out of Court to the judgment-creditor or into Court. The most that the judgment-debtor can say is that his tenants have paid to the receiver moneys due to him and obtained thereby a good discharge. The Code does not provide that such a payment shall be deemed equivalent to a payment by the judgment-debtor to the judgment-creditor personally. A provision to that effect would be inconsistent with the scheme of the Code and the position of a receiver —for a receiver who has collected moneys due to the judgment-debtor does not hold them for the judgment-creditor. He holds them for the Court in order that the Court may decide regarding them. (See *In re Dickinson*(1).) Even if the moneys had been paid into Court it would not necessarily follow that the judgment-creditor would have been satisfied.

There is an apparent hardship in holding that a judgment-debtor whose tenants have made payments to a receiver may be called upon a second time to pay money in satisfaction of the decree. The answer to that is that, if he thought the receiver was

(1) L.R., 22 Q.B.D. 187

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not a person to be trusted, he ought to have insisted on the Court's taking proper security. It is begging the question to say that it was not his business, but that of the judgment-creditor to see that security was given.

When once it is admitted that the receiver is not the agent of either party and that the decree-holder, until full satisfaction of the decree has been obtained, is entitled to go on executing his decree, the only question is whether the decree has in fact been satisfied. Is the judgment-debtor in a position to call upon the judgment-creditor to show cause under the provisions of the 258th section? In my opinion the question must be answered in the negative and therefore the appeal should be dismissed.

DAVIES, J.—A receiver was appointed by the Court under section 503, Code of Civil Procedure, at the instance of a judgment-creditor holding a money decree to execute his decree by taking possession of and selling crops, or rather the melvaram share thereof, belonging to the judgment-debtor. The receiver acted accordingly, but instead of remitting the sale-proceeds amounting to Rs. 845 odd to the Court, he embezzled the amount and absconded. As no security had been taken from the receiver, as it ought to have been, the money is lost and is irrecoverable. The judgment-creditor has now applied to the Court to again recover the decree amount from the judgment-debtor without giving him credit for the amount already collected by the receiver. The question, therefore, is whether the judgment-debtor is liable to pay that amount over again owing to the defalcation of the receiver, or whether the loss must be borne by the judgment-creditor.

The District Munsif and the District Judge held that the judgment-creditor must be the sufferer on the ground that the property which was available for the satisfaction of the decree-debt had been taken from the control of the owner, the judgment-debtor, at the instance of the judgment-creditor who had applied for the appointment of the receiver, and had not seen that due security was given by him, whereas the judgment-debtor was in no way to blame.

The learned Judge of this Court has held to the contrary, ruling that the loss occasioned by the receiver's default must, in accordance with English precedents, fall upon the estate, and as the estate in this case was the estate of the judgment-debtor, it was the

judgment-debtor who must bear the loss. The rule is no doubt equitable enough where the parties have all got an interest in the estate, because the loss is shared by them all, but here the case is quite different.

In this Court, it is urged on the one hand that the receiver should be treated as the agent of the judgment-creditor, as it was on his motion the receiver was appointed, and as it was the judgment-creditor's fault that due security was not taken, he should bear the loss. On the other hand it is argued that the decree-debt has not been satisfied and that the judgment-debtor's liability to pay it lasts until the judgment-creditor is actually paid the money due.

The solution of the difficulty appears to me to lie in the determination of the question as to when a judgment-debtor is to be considered discharged of the decree-debt, and the correct answer is, in my opinion, when he has paid the money into Court, or out of Court to the decree-holder, or otherwise as the Court directs. Section 257 of the Civil Procedure Code is my authority for the proposition. It directs that "all money payable under a decree shall be paid" in one of the three modes stated above, and although there is no express declaration that such payment operates as a discharge of the decree-debt, it seems obvious that when the judgment-debtor has paid the money payable by him in the manner in which the law directs him to pay it, he can do no more, and is henceforth absolved from further liability, or in other words, has discharged his debt. It will be conceded that a payment direct to the decree-holder—the judgment-creditor himself—subject of course to the certificate required by section 258 to be given to the Court is a valid discharge, and we find classed with such valid discharge, two other alternative modes of discharge, entirely free from any condition or proviso such as payment out of the Court to the decree-holder is subject to. The three modes of payment being classed together as alternative courses, they must be taken to be of equal efficacy, and when one course is shown to have the effect of a discharge, it follows that the others have the same effect. I take it therefore that there is a distinct implication from the directions in the section itself, that a payment into Court, or otherwise as the Court directs, of the money "payable under a decree" is an absolute discharge of the judgment-debtor as it is unconditional, just as a payment to the decree-holder

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becomes a complete discharge on compliance with a subsequent condition. It must be remembered that the Court holds money so paid into it to the credit of the decree-holder, and there are various provisions of law indicating that a payment into Court by a debtor is tantamount to a payment to the party entitled to receive it. I may instance the case of a garnishee which seems directly in point. The payment of the amount of his debt into Court "shall dis-"charge him as effectually as payment to the party entitled to "receive the same" as declared in section 268 of the Code of Civil Procedure. Then there are the cases of payment of a deposit into Court (*a*) by a defendant under section 376 of the Code of Civil Procedure which is regarded under the following section as held by the Court on plaintiff's account to whom it shall be payable, and (*b*) by a mortgagor under section 83 of the Transfer of Property Act which is held "to the account of the mortgagee." Decrees for foreclosure and redemption drawn up under sections 86 and 92 of this Act also provide for payment into Court as being equivalent to payment to the plaintiff or the defendant as the case may be. Supposing that in any of these cases the money paid in were to be misappropriated by a servant of the Court or of the bank or treasury where the money was kept, it surely could not be contended that the depositor, or the person who had made the payment under the decree, was bound to make good the loss by paying twice over. It would indeed be a case of "*bis vexari*" if the Court should issue process to recover an amount already paid to it. This convinces me that payments made into or by order of Court under plain directions of the law are good and valid discharges of the debts on account of which the Court itself undertakes to receive them, and that any loss accruing thereafter cannot be charged to the person making the payment, and if anybody is to be held responsible, it must be the officers of the Court or their master the Government. If payments into Court or payments made as ordered by the Court are valid discharges, as in my opinion they are, the further question arises in this case whether the receipt by the receiver of the money which he had realized by sale of the judgment-debtor's property amounted to a payment under direction of the Court, for it is not pretended the money ever reached the Court, so as to be deemed as having been paid into it. Now I presume that payments made to bailiffs executing a warrant of arrest or a warrant of attachment

and authorized to receive them, would be considered cases falling under clause (*c*) of the section 257 as payments made "otherwise as the Court directs." These processes against the person or the property of the judgment-debtor are issued under the authority of section 254 of the Code, and the forms are to be found in the fourth schedule Nos. 136 and 154. Each form provides for payment being made by the judgment-debtor to the process server of the amount of the decree and costs of execution, in which case the warrant ceases to have effect, the judgment-debtor being released from custody in the one case or his property in the other, these directions being more expressly given in sections 336 and 275 of the Code itself. This latter section is instructive as showing that payment into Court is a satisfaction of the decree so far as the judgment-debtor is concerned, as may be gathered from the wording, "if the amount decreed with costs, &c., be paid into "Court, or if satisfaction of the decree be otherwise made through "the Court." But this is by the way. From the references made it cannot be doubted that a payment to an officer of the Court under direction of the Court is as effectual as a payment made directly into Court. The case of a receiver seems precisely on the same footing. He is an officer of the Court equally with a bailiff or a process server, and he collects the money due under the decree also by direction of the Court, and payment to him is therefore as good and valid as to the Court itself, falling as it does under clause (*c*) of section 257. In this view I come to the conclusion that the judgment-debtor, appellant in this case, has discharged the decree-debt in execution to the extent of the Rs. 845 and odd of money collected by the receiver, and that execution can proceed only for the balance due if any. I would therefore reverse the decision under appeal and restore that of the District Munsif with appellant's costs throughout to be paid by the respondent.

It appears that the appointment of the receiver was made by the Munsif without the express authorization of the District Court, which is required by section 505 of the Code, but as the appointment has been treated throughout as a valid one, its validity cannot well be questioned at this late stage of the case; at any rate it is a matter to which the principle of "*quod fieri non debet factum valet*" may most appropriately be applied.

In consequence of the difference of opinion between their Lordships, the case was referred to the Full Bench consisting of