

## APPELLATE CIVIL.

*Before Mr. Justice Subramania Ayyar.*

RAMA AYYAN (COUNTER-PETITIONER), APPELLANT,

v.

SREENIVASA PATTAR (PETITIONER), RESPONDENT.\*

*Civil Procedure Code, ss. 244, 258.*

On an application for execution of a decree being presented by a transferee decree-holder, the judgment-debtor opposed alleging in his petition that he had transferred certain immovable property to the petitioner in consideration of his paying the judgment debt to the original decree-holder and that the petitioner had discharged the debt, but subsequently having got the decree transferred to himself instead of entering up satisfaction of the decree, fraudulently applied for execution. Satisfaction had not been entered up under section 258, Civil Procedure Code:

*Held*, that there must be an enquiry into the truth of the judgment-debtor's allegations, and if proved the petition for execution must be dismissed, and further that section 258, Civil Procedure Code, was inapplicable to the present case, since that section applies only to the case of parties who stand in the relation of judgment-debtor and judgment-creditor at the date of the transaction.

APPEAL against the order of R. S. Benson, District Judge of South Malabar, passed on civil miscellaneous appeal No. 102 of 1893, reversing the order of V. Rama Sastri, District Munsif of Temelprom, in civil miscellaneous petition No. 1762 of 1893.

The facts of this case necessary for the purposes of this report appear sufficiently from the judgment of the High Court.

*Sundara Ayyar* for appellant.

Respondent was not represented.

JUDGMENT.—In original suit No. 77 of 1883 on the file of the Temelprom District Munsif's Court, a decree was passed against the present respondent. The appellant applied to that Court to execute the decree as transferee thereof. The respondent put in a petition wherein he stated that he had transferred certain immovable property to the appellant in consideration of his paying the judg-

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\* Appeal against Appellate Order No. 6 of 1894.

ment debt to the original decree-holder, that the appellant accordingly had discharged the debt, that subsequently, however, he (the appellant) had got the decree transferred to himself, and that, having thus become the assignee, instead of entering up satisfaction, he has fraudulently applied for execution of the decree against the respondent. He therefore prayed that the application for execution be rejected. The District Munsif, without taking evidence, dismissed the petition on grounds which I think it unnecessary to notice. The District Judge on appeal came to the conclusion that, if the allegations contained in the respondent's petition be true, the appellant should be taken to have become a trustee for the discharge of the judgment debt in 77 of 1883, and the appellant's application to execute the decree is an abuse of the trust. Consequently he reversed the order of the District Munsif whom he directed to record, after admitting evidence, a finding on the question of trust raised and to pass a fresh order.

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It was urged before me that the District Judge's view, that a trust was undertaken by the appellant when the property was transferred to him, is erroneous, and therefore his order should be set aside and that of the District Munsif, rejecting the respondent's petition, restored. I think, however, that the District Judge's order should not be disturbed, as I hold that it is right in so far as it considers that an enquiry into the allegations of the respondent is necessary.

Now assuming these allegations to be well founded, whether, when the appellant became the transferee of the property in consideration of his paying off the debt due by the respondent, the former became trustee, as suggested in the order of the District Judge, may be open to doubt. But there can be no doubt that the appellant thereby undertook an obligation to discharge the debt. Having undertaken that duty, it follows he has certainly now no right to execute the decree. This would be still clearer if, as alleged by the respondent, the appellant did in fact pay the original judgment-creditor the amount due to him. In such circumstances the application made by the appellant, praying for the execution of the decree, must be held to be a fraud against which the respondent is entitled to redress. And now that the appellant has been allowed to appear on the record as the assignee of the decree, the question whether the application to execute it is fraudulent or not is one relating to execution arising between the decreee

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holder and the judgment-debtor, and consequently it can and ought to be investigated under section 244, Civil Procedure Code (*Paranjpe v. Kanade*(1), *Subbaji Rau v. Srinivasa Rau*(2), *Vivaraqhava Ayyan-gar v. Venkatacharyar*(3)).

As, however, the agreement between the appellant and the respondent about the former paying the decree amount to the original judgment-creditor is said to have taken place so far back as 1883-84, it might perhaps be suggested that the transaction in question cannot, under the last paragraph of section 258, Civil Procedure Code, be recognized by the Court in execution proceedings, inasmuch as it was not certified by the appellant and inasmuch as the respondent's application was, with reference to the date of the agreement, made after ninety days, the period prescribed for an application by a judgment-debtor under that section. I consider, however, that the said paragraph of the section has no application to this case, because at the date of the transaction, which, if proved, would prevent the appellant from executing the decree, he was not himself the decree-holder. As I understand the said provision of the law, it is only when the parties to a transaction entered into for the purpose of satisfying or adjusting a decree stand at the date of such transaction in the relation of judgment-creditor and judgment-debtor to each other that a Court executing the decree is prohibited from recognizing such transaction unless duly certified. That this must be so is clear when the object of section 258 is considered—compare *Ramji Pandu v. Mahomed Walli*(4) following *Yella v. Mumisami*(5). The first paragraph of the section imposes on judgment-creditors the duty of certifying to the Court any payment out of Court on account or any satisfaction or adjustment in respect of the decree. The second paragraph enables judgment-debtors to apply to Courts to compel judgment-creditors to certify if they had failed to do so and empowers Courts to hold an enquiry into the matter. The last paragraph prohibits judgment-debtors, who omit to apply under the second paragraph or having applied fail to establish their case, from relying in execution proceedings upon any payment, satisfaction or adjustment not duly certified. Manifestly therefore the enquiry under the said second paragraph can take place only between persons standing in the relation of judgment-debtor and judgment-creditor.

(1) I.L.R., 6 Bom., 148. (2) I.L.R., 2 Mad., 264. (3) I.L.R., 5 Mad., 217.  
(4) I.L.R., 13 Bom., 671. (5) I.L.R., 6 Mad., 101.

If the former has entered into a contract, not with the latter, but with a third party, with reference to the satisfaction or adjustment of a decree, the judgment-creditor cannot make any application against such third party under section 258, and consequently the latter cannot on principle be permitted to take advantage of the prohibition imposed by the concluding paragraph of that section as a penalty for the judgment-debtor's omission to apply to the Court under the previous paragraph, or for his failure to prove his case if he did apply. The circumstance that the third party, subsequently to the contract, becomes the transferee of the decree which he contracted to satisfy, can have no retrospective effect, so as to deprive the judgment-debtor of his right to establish that the transferee is, by the anterior contract, precluded from realizing the judgment debt.

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It is hardly necessary to observe that it is not the case of the respondent that, subsequent to the appellant being recognized by the Court as transferee of the decree, anything transpired which the respondent is entitled to rely upon as a satisfaction or an adjustment of the decree. As regards the appellant's getting himself recognized as transferee of the decree, there is nothing on the record before me to show whether, at the time when he applied for it, the respondent had notice of the application, and whether the latter then raised any objection to its being granted and with what result. Consequently it is not now possible to pronounce any opinion upon the question how far the order of the Court permitting the name of the appellant to be put on the record as that of the transferee affects the right of the respondent to object to the appellant's being allowed to execute the decree. This and any other question that might be raised against the sustainability of the respondent's present petition will have to be determined at the enquiry which has been ordered, and which I think was rightly ordered.

The appeal fails and is dismissed.

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