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JOY PROKASH LALL v. SHEO GOLAM SINGH.

So far as we can see, the award is a perfectly fair one and the plaintiffs have, as a matter of justice, no reason to complain.

Both appeals are dismissed with costs.

Appeals dismissed.

1884 *September* 8.

Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Beverley.

IN RE SUNDER DASS (PETITIONER.)*

Civil Procedure Code—Act XIV of 1882, *s.* 295—*Decree-holders sharing rateably in sale proceeds must be bonâ fide decree-holders.*

The words "decree-holders" or "persons holding decrees for money against the same judgment-debtor" in s. 295 of the Code of Civil Procedure, signify *bonâ fide* decree-holders.

A Court is bound, in cases falling within this section, to satisfy itself whether the claimants are *bonâ fide* decree-holders within the meaning of the section, and where it is unable to satisfy itself as to the *bonâ fides* of the claim, the Court should exclude such claimant from the distribution of assets.

ON the 9th February 1884 one Hur Pershad Dass obtained a decree in the Court of the Subordinate Judge of Arrah for Rs. 5,000 against Raghu Nath Pershad and six others upon certain hundies.

On the 15th March 1884 Hur Pershad Dass sold this decree to one Sunder Dass, and on the 18th March 1884 Sunder Dass applied to have his name entered on the record as decree-holder, and on the 3rd April 1884 an order was passed granting this application.

Sunder Dass made several applications for execution of this decree, and the sale of certain properties of the judgment-debtor was ultimately fixed for the 7th July 1884, the judgment-debtor having obtained a postponement of a previous order for sale dated the 2nd June.

On the 7th July 1884 the properties were sold in execution of another decree obtained by one Mullick Feda Ali against the same judgment-debtors, and in consequence thereof the sale in execution of Sunder Dass's decree was stayed.

Sunder Dass, under s. 295 of the Civil Procedure Code, claimed to share rateably in the sale proceeds, but on the 11th July

* Civil Rule No 993 of 1884, against the order passed by Baboo Kali K. Banerjee, Subordinate Judge of Arrah, dated the 16th of July 1884.

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1884 Feda Ali applied to the Court stating that the decree held by Sunder Dass was held by him *benamee* for the judgment-debtor, and that, therefore, Sunder Dass was not entitled to share rateably with the other decree-holders.

The Subordinate Judge, by an order dated the 11th July 1884, declined to enquire into the question of *benamee* in execution proceedings.

On the 12th July 1884 one Shedeullah Lall presented another petition to the same Subordinate Judge raising the same question, and the Subordinate Judge on the 14th July made an order directing an enquiry into the question as to whether Sunder Dass' decree was held *benamee* or not.

Sunder Dass thereupon applied to the High Court to have the order of the Subordinate Judge, dated 14th July 1884, set aside, on the ground (1) that the order of the 11th July 1884 was a final order, and that the Subordinate Judge should not have gone behind that order and passed one inconsistent therewith; and (2) that the Subordinate Judge had no jurisdiction to enter into the question of *benamee* in a case under s. 295 of the Code.

A rule *nisi* was thereupon granted to Sunder Dass, calling upon Shedeullah Lall to show cause why the order of the Subordinate Judge should not be set aside.

Upon the hearing of the rule,—

Moulvi *Mahomed Yusuf* appeared in support of the rule.

No one appeared on the other side.

The order of the Court was delivered by

GARTH, C.J.—Upon the best consideration that we have been able to give to this case, we think that the rule should be discharged. We granted the rule, having regard to the fact that s. 295 of the Code introduced a novel procedure in execution cases, and that the point submitted to us had arisen, so far as we were aware, for the first time.

We have not had the advantage of hearing both sides; but having heard the learned pleader who obtained the rule, we think that it should be discharged.

The person on whose behalf he applied, claimed as a decree-holder to share in the proceeds of a sale, which had been made

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in execution of a decree obtained by another person. There were several decree-holders who claimed a share in those proceeds, and under these circumstances, the Court, under s. 295, is bound to divide the assets rateably amongst all the persons who hold decrees against the same judgment-debtor, and who have not obtained satisfaction of their decrees.

The objection taken before the Court below against the decree-holder who obtained this rule, was, that his decree against the judgment-debtor was not a *bonâ fide* decree, and that he held it in fact in trust for the judgment-debtor; and, if that were true, and the claimants were to share in the distribution of the assets, the other decree-holders might, under the last clause but one of s. 295, recover back the money from him.

That clause runs thus: "If all or any of such assets be paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets."

Munshi *Mahomed Yusuf* has contended that this clause is in his favor. He says, that is the only way in which the question can be properly tried, whether his client is entitled to share in the assets or not, and that the Court below, in the execution case, had no right to go into the question. He contends that, so long as his client holds a decree against the judgment-debtor, which is unsatisfied (let that decree be ever so fraudulent) still the Court is bound to give effect to it, and to allow the decree-holder to share in the assets.

We cannot adopt that view. We think that the words "decree-holders" or "persons holding decrees for money against the same judgment-debtor" in s. 295 must mean *bonâ fide* decree-holders against the judgment-debtor; and if in point of fact the decree which the present applicant holds is a sham decree, we think that the Court has a right to enquire into the question, and to exclude him from the distribution of assets.

If this were not so, it is obvious that the section would give rise to a great deal of fraud, because any man, who is in difficulties, and likely to have executions issued against him by *bonâ fide* creditors, might always have a number of sham decrees in readiness against himself, to defeat the claim of any *bonâ fide*

creditor who might put in an execution. As soon as the *bonâ fide* creditor put in his execution, and sold the property, these sham decree-holders, who would really represent the judgment-debtor might come in, and completely sweep away all the assets from the *bonâ fide* decree-holder.

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But thereby says Munshi *Mahomed Yusuf*, if his client did improperly get hold of the assets, he might be made to disgorge them by a suit.

That is perfectly true; but, on the other hand, his client might run away with the money, and it is not always easy to get back money out of the hands of a dishonest person. We think that a Court is bound to see, on occasions of this kind, when assets are to be distributed, whether the claimants are *bonâ fide* decree-holders within the meaning of the section; and even if the Court should decide in favor of the claimants, the last clause but one of s. 295 is intended to give the person or persons who may be affected by that decision, the right to bring a regular suit to establish his or their rights.

We think, therefore, that the rule must be discharged.

Rule discharged.

Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Prinsep.

1884 *September* 10.

SOTISH CHUNDER LAHIRY (ONE OF THE PLAINTIFFS. DECREE-HOLDERS) PETITIONER *v.* NIL COMUL LAHIRY AND OTHERS (JUDGMENT-DEBTORS) OPPOSITE PARTIES. *

Sale in Execution of estate of deceased—Suit against representatives of deceased husband's estate.

In 1862 a suit for mesne profits was brought against certain persons as being the heirs of one Romanath Lahiry deceased, among whom were his widow and two infant sons; during the pendency of this suit, the two infant sons died; and the widow was made a defendant as representing the estate of her deceased sons.

The suit was decreed in favor of the plaintiffs in 1875; and on the plaintiffs applying for execution the widow objected that 5-16th of the properties, against which execution was sought, was the property of her adopted son

* Civil Rule No. 539 of 1884, against the order of J. J. S. Driberg, Esq., Deputy Commissioner of Dhubri, dated the 31st of December 1883.