APPELLATE CIVIL.

Before Mr. Justice Varadachariar.

CHOKKALINGAM CHETTIAR AND TWO OTHERS (PETITIONERS —DECREE-HOLDERS), PETITIONERS, 1934, March 15.

v.

MUTHUSWAMI GOUNDAN AND TWO OTHERS (RESPONDENTS— JUDGMENT-DEBTORS), RESPONDENTS.*

Code of Civil Procedure (Act V of 1908), sec. 73—Satisfaction of decree obtained by decree-holder within meaning of—Date material for determination of question of—Sale in execution of a decree-holder's decree confirmed and sale proceeds available for satisfaction of his decree before date of order on application for rateable distribution—Satisfaction of his decree to extent of such sale proceeds if amounts to within meaning of sec. 73.

The petitioner, who held a decree against two defendants, brought to sale three items of properties in execution thereof. The respondent held a decree against only one of those defendants and that defendant owned only item 1 and a half of item 2 of the said items. The respondent could therefore claim rateable distribution only from out of the sale proceeds of item 1 and a half of item 2. The question was as to the basis on which the proportion as between the two rival decree-holders was to be fixed. The sales of the other items had been confirmed before the date of the lower Court's order so that their sale proceeds were available to the petitioner for satisfaction of his decree debt.

Held that the lower Court was right in proceeding on the footing that, in calculating the basis with reference to which the amount payable to the petitioner was to be fixed, his decree must be treated as satisfied to the extent of the proceeds realised by the sales of the other items which had been confirmed.

The date with reference to which the question of satisfaction or non-satisfaction of a decree within the meaning of section 73

* Civil Revision Petition No. 205 of 1931.

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of the Code of Civil Procedure has to be determined is not necessarily the date of the application for rateable distribution but may be some later date.

PETITION under section 115 of Act V of 1908 and section 107 of the Government of India Act, praying the High Court to revise the order of the Court of the Subordinate Judge of Coimbatore dated 26th August 1930 and made in Execution Petition Register No. 428 of 1929 in Original Suit No. 307 of 1927.

K. V. Ramachandra Ayyar for petitioners.

P. N. Marthandam Pillai for respondents.

JUDGMENT.

Mr. K. V. Ramachandra Ayyar has raised an interesting question in this case. Both sides admit that there is no decision dealing with this question and the arguments before me have proceeded mainly upon general considerations and a few rules of the Code.

At the outset, I pointed out to Mr. Ramachandra Ayyar that, though this Court has sometimes entertained revision petitions against orders under section 73 of the Civil Procedure Code, it is only as an exception, because this is one of the class of cases where the aggrieved party has another remedy by way of suit. Mr. Ramachandra Ayyar contended that, if the point raised in the civil revision petition is fairly clear and this Court can decide the matter once for all, it was scarcely necessary to drive the parties to another suit and I have accordingly heard him at some length. It may be that the learned Subordinate Judge was not justified in his remark that rateable distribution is a matter of equity [cf. however *Thakurdas*

Motilal v. *Joseph Iskender*(1)] and it is true that the Court has got to deal with it on the terms of section 73. Having had the benefit of the argument, I see no reason to differ in the result from the lower Court's order. As the matter is one of first impression I should like to indicate the reasons for the above conclusion.

Section 73 of the Code provides that the application for rateable distribution must be made before the assets are received. Dealing with the persons to whom the money should be distributed, it speaks of them as persons who "have not obtained satisfaction" of their decrees. The relevant facts in this case are that the petitioner, who was the decree-holder in Original Suit No. 307 of 1927 on the file of the Sub-Court of Coimbatore, had obtained a decree against two sets of defendants and in execution thereof brought to sale three items of properties, all the sales taking place on 2nd April 1930. The respondent is the decree-holder in Original Suit No. 917 of 1928 on the file of the Court of the District Munsif of Tiruppur. His right to rateable distribution is not disputed, but the point raised is as to the basis on which the proportion as between the two rival decree-holders is to be fixed. The difficulty in determining this question has arisen from the fact that the decree-holder in Original Suit No. 917 of 1928 could claim rateable distribution only from out of the sale proceeds of item 1 and a half of item 2, because it is only against the owner of so much of the property sold that he has obtained a decree. The learned Subordinate Judge has proceeded on the footing that, in calculating the

(1) (1917) I.L.R. 44 Calc. 1072, 1090.

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basis with reference to which the amount payable to the petitioner is to be fixed, he must treat his decree as satisfied to the extent of the proceeds realised by the sale of the properties belonging to the other judgment-debtor. It is stated in his order—and it has not been denied before me—that the sales of the other items had been confirmed before the date of his order, so that their sale proceeds were available to the decree-holder for satisfaction of his decree debt and, if there was any delay in applying them in part satisfaction of his decree, it was merely by reason of the decree-holder not taking steps to draw the money.

It cannot be disputed that in a question of rateable distribution, only the unsatisfied portion of the decree ought to be taken into account [see *Sarat Chandra Kundu* v. *Doyal Chand Seal*(1).] Mr. Ramachandra Ayyar contends that the learned Judge was not entitled to reduce the amount due to the decree-holder in Original Suit No. 307 of 1927 by taking into account the sale proceeds of the second set of properties because this amount could not be treated as having been received by the decree-holder either on the date of the application for rateable distribution or on the date on which the sale was held or even on the date on which the sale proceeds were paid into Court, because the sale may not be confirmed at all and it will therefore not be right to treat this amount as available to the decree-holder at all. In fact, he contends that it is the actual receipt by him before the date of the application for rateable distribution that ought to be the test or at least before the date of

(1) (1899) 3 C.W.N. 368.

receipt of assets by the Court and not anything that may happen after the date of the application or the receipt of assets by the Court. I am unable to accept this extreme contention. When section 73 speaks of a person not having obtained satisfaction of his decree, the insertion of these words *after* the reference to the application having been made before the receipt of assets clearly suggests that the question of satisfaction or non-satisfaction may have to be determined with reference to some date later than the application for rateable distribution. I put to Mr. Ramachandra Ayyar, for the sake of illustration, a case in which a decree-holder to whom some amount was due when he applied for rateable distribution has in fact subsequently received the whole amount due to him under his decree before the time for rateable distribution arrived and wished to know whether according to his contention rateable distribution should be awarded even to such a decree-holder. Mr. Ramachandra Ayyar no doubt felt that logically he must go that length but it seems to me it proves too much [*cf. Sarat Chandra Kundu* v. *Doyal Chand Seal*(1) referred to *supra*]. He was no doubt right in his contention that the mere fact of the sale having taken place should not be treated as satisfying the decree-holder's decree to the extent of the possible sale proceeds ; because it is clear from rule 84 of Order XXI that, if the sale is not completed by the purchaser, the 25 per cent deposit may be forfeited to the Government, and this shows that that amount cannot be treated as necessarily available to the decree-holder. It may even be that, after the whole sale

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price has been deposited into Court, application may be pending for setting aside the sale by some persons interested in the property. I am therefore willing to recognize that during such periods the sale proceeds cannot be regarded as earmarked for the satisfaction of any particular decree. But after the sale had been confirmed and when the sale proceeds paid into Court are at any moment available to the particular decree-holder, I do not see any reason why he should not be regarded as having obtained satisfaction of his decree to that extent.

The above considerations lead me to think that the learned Subordinate Judge came to a correct conclusion. At any rate, the case cannot be said to be one in which the point is so clear that it can be finally decided in revision proceedings. As already indicated, the petitioner has his remedy by suit to have this and all other cognate questions finally settled between the parties.

The revision petition is dismissed with costs.

A.S.V.