

APPELLATE CIVIL.

Before Mr. Justice King.

KOCHERLAKOTA GOPALA RAO (PETITIONER),
 APPELLANT,

1938,
October 20.

v.

KOPPARAJU LAKSHMINARASAMMA
 (RESPONDENT), RESPONDENT.*

Code of Civil Procedure (Act V of 1908), sec. 73—Decree for recovery of a certain sum from defendants 1 and 2 and of costs from defendants 1 to 3—Rateable distribution—Amount received by decree-holder by way of, in respect of total amount due to him under decree—Application of, solely towards amount payable by defendants 1 and 2 alone under decree—Decree-holder's right of.

The decree in a suit awarded the respondent (i) a certain sum payable by defendants 1 and 2 and (ii) a further sum by way of costs payable by them and by the third defendant. There was thus a total sum payable to the respondent under the decree in respect of what might be called two debts due by his judgment-debtors, defendants 1 and 2 being liable for both the debts and the third defendant also being liable for that relating to costs. The respondent executed his decree and in his own execution petition and in another execution petition by another creditor of defendants 1 and 2 the respondent received a certain sum amounting roughly to about one half of the total decree amount by way of rateable distribution. The money which he received by way of rateable distribution was realised by the sale of property belonging to defendants 1 and 2 alone. The respondent contended that he had a right to appropriate the money received by him by way of rateable distribution to any portion of the decree which he liked and claimed that it must all go towards the satisfaction of the first of the two debts, i.e., the sum payable under the decree by defendants 1 and 2 alone.

* Appeal Against Appellate Order No. 135 of 1935.

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Held that the respondent was not entitled to appropriate the sum he received by way of rateable distribution in any way he liked and that the said sum must go towards the payment of every rupee of his debt if the total amount due to him under the decree was regarded as a single debt, or equally towards the payment of both the debts contained in the decree if the sums payable to him under the decree were regarded as two debts; in other words, that the third defendant was entitled to a credit for a portion of the amount received by the respondent by way of rateable distribution.

Though the money which the respondent received by way of rateable distribution was realised by the sale of property belonging to defendants 1 and 2 alone, it was because of the total of the two debts that he was able to get as much as he did get by way of rateable distribution.

Bardwell v. Lydall(1) applied.

APPEAL against the order of the Court of the Subordinate Judge of Bezwada, dated 27th March 1935 and made in Appeal Suit No. 5 of 1935 preferred against the order of the Court of the District Munsif of Bezwada, dated 24th November 1934 and made in Civil Miscellaneous Petition No. 1830 of 1934 in Original Suit No. 326 of 1929.

B. V. Ramanarasu for appellant.

Respondent was not represented.

JUDGMENT.

KING J.

KING J.—This appeal raises an interesting point with regard to the effect of rateable distribution of assets upon the amounts payable to the decree-holder under the decree in Original Suit No. 326 of 1929. That decree awards the decree-holder a certain sum payable by the first and second defendants and also a further sum by way of costs payable by not only the first and second defendants but by the third defendant also.

(1) (1831) 7 Bing. 489; 131 E.R. 189.

The decree was executed by the decree-holder and in his own execution petition and in another execution petition by another creditor of the first and second defendants he received a certain sum amounting roughly to about one half of the total decree amount by way of rateable distribution. Subsequently to the receipt of this money the third defendant has admittedly paid Rs. 100 to the decree-holder. In 1934 the third defendant filed a petition in the Court of the District Munsif of Bezwada praying that full satisfaction might be entered in his favour with regard to that portion of the decree for which he was liable, namely, costs. Both the learned District Munsif and the learned Subordinate Judge of Bezwada have dismissed this petition. Hence this appeal.

I have not had the advantage of hearing any arguments on behalf of the respondent. But it seems to me quite clear from the principles contained in the English cases cited by the learned Counsel for the appellant that these decisions of the Courts below are wrong. The right of the decree-holder to receive the money which he received in the rateable distribution was derived from the fact that there was payable to him a total sum in respect of what may fairly be called two debts due by his judgment-debtors. For both these debts the first and second defendants were liable and for that relating to costs the third defendant also. The decree-holder opposes the third defendant's application to record full satisfaction and argues that he had a right to appropriate this money to any portion of the decree which he liked ; and at first sight it does appear as if such a right may reasonably be claimed inasmuch as the money was realised by the sale of property which was the property of the first and second defendants alone. The fact however still remains that it was

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because of the *total* of the *two* debts that the respondent was able to get as much as he did get by way of rateable distribution. It will then be clearly inequitable and unfair for him to claim after receiving the money that it must all go towards the satisfaction of the first of these two debts. The result would then be that he had received for the first debt more than was due to him under the provisions of the rule dealing with rateable distribution and less on the second debt.

The case which is the foundation for the argument of the learned Counsel for the appellant is *Bardwell v. Lydall*(1), decided more than a century ago in the English Courts. That was a case in which a guarantee had been given by the defendant to the plaintiffs to be responsible for the debts of a certain Lionel Mayhew to the extent of £400. Mayhew's debts to the plaintiffs amounted eventually to £625 and he became virtually insolvent and entrusted his properties to trustees for payment of his creditors. The trustees paid the plaintiffs 8 s. 7 d. in the pound on this sum of £625. They then sued the defendant on his guarantee for the remainder of that debt, which amounted to less than £400. It was held by the Court that the 8 s. 7 d. in the pound which had been received was 8 s. 7 d. in every pound of the £625 which constituted the debt, and therefore to the extent of 8 s. 7 d. every pound of the £400 which had been guaranteed by the defendant had already been paid off. The liability therefore under the guarantee amounted only to the remaining 11 s. 5 d. in the pound. I have carefully considered this case, which has been followed in subsequent cases in England, and consider that it must apply in principle to the facts of the present case. The decree-holder here, it is clear, cannot appropriate the sum he received

(1) (1831) 7 Bing. 489; 131 E.R. 189.

by way of rateable distribution in any way he likes. He must admit that what he has received goes towards the payment of every rupee of his debt if it be regarded as a single debt, or equally towards the payment of both the debts contained in the decree if they are regarded as two debts.

It is clear from the calculations made by the learned Subordinate Judge that if this point of law is to be accepted, the appellant is entitled to a credit for the sum of Rs. 89-15-0. It has already been said that he has paid Rs. 100. The total amount of Rs. 189-15-0 is more than the amount of costs with interest due at the time of the payment under the rateable distribution. Therefore the appellant is entitled to succeed in his contention that he has fully satisfied his liability under the decree. In the result, this appeal must be allowed and the appellant's petition ordered with costs throughout.

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v.v.c.
