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entitled to recover from each tenant of the *mahál* their proportionate share of rent, leaving the remainder to be collected by the other co-sharers in proportion to their respective shares in the *mahál*. The section says that such is not to be the case, unless local custom or special contract is established. Now, in the present case the Court of first instance observes :—"No attempt has been made and no evidence has been adduced to prove the existence of any such custom in this case," and the lower appellate Court has used even more emphatic language. The learned Judge of that Court observed :—

"Custom was not set up in the Revenue Court. There is no sufficient proof of the alleged harassing and destructive custom, and partial admissions of some of the respondents if embodied in the *wajib-ul-arz* would not convince me that such monstrous custom prevailed."

Sitting here as a Judge of second appeal I must accept these concurrent findings of fact, and must hold that the plaintiffs have failed to prove any such custom as would entitle them to the declaration that they have a right to realize or claim only their proportionate share of rent from tenants in the *mahál* in opposition to the general rule of the rent-law of these Provinces enunciated in s. 106 of the Rent Act. It follows that neither the declaration nor the money which they claim in this suit as the consequence of such declaration can be awarded to the plaintiffs-appellants.

For these reasons the grounds urged in appeal cannot prevail and I dismiss the appeal with costs.

Appeal dismissed.

1888
November 12.

Before Mr. Justice Mahmood.

MUHAMMAD SULAIMAN (JUDGMENT-DEBTOR) *v.* JHUKKI LAL (DECREE-HOLDER).*

Execution of decree—Compromise—Estoppel—Civil Procedure Code, ss. 257*A*, 375, 647.

Although a Court executing a decree is bound by the terms thereof, and cannot add to or vary or go behind them, the effect of s. 375 read with s. 647 of the Civil Procedure

* Second Appeal No. 1408 of 1887 from a decree of R. G. Hardy, Esq., Deputy-Commissioner of Jhánsi, dated the 12th July, 1887, confirming a decree of Pandit Gopal Rao, Deputy Collector of Jhánsi, dated the 30th May, 1887.

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Code is that, when a decree is put into execution, the proceedings taken therefor amount to a separate litigation in which the parties can enter into a compromise much in the same manner as in a regular suit. Such a compromise does not extinguish the decree; and the Court executing the decree is bound, subject to the conditions indicated by s. 375, to give effect to the compromise. In execution proceedings the word "suit" in s. 375 must, with reference to s. 647, be read as meaning "execution of decree." By reason of the words in s. 375, "lawful agreement or compromise," the provisions of s. 257A become applicable to such a case; and, so long as the requirements of that section are satisfied, the compromise becomes a part of the decree itself, and—at least as between the decree-holder and the judgment-debtor—can be given effect to in execution of the decree.

When such a compromise has been duly made and sanctioned by the Court executing the decree, neither the decree-holder nor the judgment-debtor can resile from the position assumed by them in the matter of the compromise.

Even if such a compromise has been irregularly sanctioned by the Court executing the decree—the irregularity not amounting to want of jurisdiction—the compromise must take effect until the order sanctioning it is set aside, and, until that happens, the parties are bound by it in all proceedings relating to the execution of the decree, and, where they have acted upon it, they are estopped thereafter from questioning its validity.

Sita Ram v. *Dasrath Das* (1) followed, *Debi Rai* v. *Gokal Prasad* (2), *Ram Lakhan Rai* v. *Bakhtaur Rai* (3), *Fateh Muhammad* v. *Gopal Das* (4), *Ganga* v. *Murlidhar* (5), *Sheo Golam Lal* v. *Beni Prosad* (6), *Lakshmana* v. *Sukiya Bai* (7), *Yella Chetti* v. *Munisami Reddi* (8), *Fisani* v. *Attorney-General of Gibraltar* (9), and *Sadasiva Pillai* v. *Ramalinga Pillai* (10) referred to.

THE facts of this case are stated in the judgment of the Court.

Mr. *Abdul Majid*, for the appellant.

Pandit *Sundar Lal* and Munshi *Madho Prasad*, for the respondent.

MAHMOOD, J.—The decree-holder-respondent obtained a simple money-decree against the judgment-debtor-appellant on the 24th March, 1884, and applied for execution thereof on the next day and obtained attachment of the judgment-debtor's property. Thereupon the judgment-debtor's brother, Muhammad Ibrahim, made an application on the 14th June, 1884, stating that an agreement had

(1) I. L. R., 5 All. 492.
(2) I. L. R., 3 All. 585.
(3) I. L. R., 6 All. 623.
(4) I. L. R., 7 All. 424.
(5) I. L. R., 4 All. 240.
(6) I. L. R., 5 Calc. 27.
(7) I. L. R., 7 Mad. 400.
(8) I. L. R., 6 Mad. 101.
(9) L. R., 5 P. C. 516.
(10) L. R., 2 I. A. 219.

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been arrived at to the effect that Rs. 200 cash was to be paid to the decree-holder and the balance was to be paid by instalments of Rs. 100 *per annum*, failing which execution was to be taken out against the judgment-debtor and then from his brother the applicant. The decree-holder-respondent appears to have accepted this arrangement, and on the 4th July, 1884, the Court passed an order sanctioning the agreement and directing that the execution of decree in future should take place according to the terms of the agreement against the original judgment-debtor and his surety Muhammad Ibrahim. The order further directed the attached property to be released and, to use the words of the lower appellate Court, "the signature of the judgment-debtor is appended beneath the order."

The present litigation began with an application made by the decree-holder on the 28th April, 1887, for execution of the decree against the original judgment-debtor and the surety. The original judgment-debtor resisted the execution upon the ground that since Muhammad Ibrahim had stood surety for him, the decree could not be executed, and the Court of first instance dealing with the objection held that "the decree should likewise be executed against Muhammad Sulaiman, and on failure to recover the money from him, the decree-holder might then institute a fresh suit against Muhammad Ibrahim, for he cannot recover the money from him by taking out execution of the present decree."

The effect of the first Court's order was to allow execution against the original judgment-debtor, Muhammad Sulaiman, appellant, and to disallow it against the surety, Muhammad Ibrahim.

Upon appeal by the judgment-debtor, Muhammad Sulaiman, the learned Judge of the lower appellate Court has held that "even if a fresh contract was entered into, the judgment-debtor is estopped, inasmuch as he has acted on the contract by fulfilling some of its conditions, namely, paying Rs. 200 cash and one at all events of the subsequent instalments. He cannot, therefore, repudiate the condition now being enforced against him, namely, the execution of decree against himself on account of the non-payment of the instalments."

Upon these grounds the learned Judge upheld the order of the first Court.

This second appeal has been preferred by the judgment-debtor, Muhammad Sulaiman, and the only ground urged is that the agreement of the 14th June, 1884, and the order of the 4th July, 1884, extinguished the decree, and that the only remedy now available to the decree-holder-respondent lies in a regular suit against the surety who undertook liability under the compromise, or rather the arrangement above-mentioned.

In support of this contention Mr. *Abdul Majid* has relied upon a Full Bench ruling of this Court in *Debi Rai* v. *Gokal Prasad* (1) which was followed in *Ram Lakhan Rai* v. *Bakhtawar* (2) and *Fateh Muhammad* v. *Gopal Das* (3). On the other hand, Pandit *Sundar Lal* for the respondent in opposing the contention cites a later Full Bench ruling of this Court in *Sita Ram* v. *Dasrath Das* (4) which appears to have been decided without any reference to the earlier Full Bench ruling. Again, I am referred to the case of *Ganga* v. *Murlidhar* (5) in which the learned Judges distinguished the case from the Full Bench ruling in *Debi Rai* v. *Gokal Prasad* (1) and also to a ruling of the Calcutta High Court in *Sheo Golam Lal* v. *Beni Prosad* (6) and a ruling of the Madras High Court in *Lakshmana* v. *Sukiya Bai* (7).

Upon the strength of these various rulings the case has been argued before me at considerable length on both sides, and much has been said as to whether or not the two Full Bench rulings of this Court above-mentioned are in conflict with each other, and it has been contended that the later Full Bench ruling in *Sita Ram* v. *Dasrath Das* (4) intended to overrule the earlier Full Bench ruling in *Debi Rai* v. *Gokal Prasad* (1) and to adopt the dissentient opinion of Oldfield, J., in the latter case, although nothing to this effect appears in the judgment of the later Full Bench. As to this part of the argument, I need only say that sitting here as a single Judge I am bound by the Full Bench rulings of this Court, and whether or

(1) I. L. R., 3 All. 385.
(2) I. L. R., 6 All. 623.
(3) I. L. R., 7 All. 424.
(4) I. L. R., 5 All. 492.
(5) I. L. R., 4 All. 240.
(6) I. L. R., 5 Calc. 27.
(7) I. L. R., 7 Mad. 400.

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not there is conflict between any two of them, I am bound by the rule laid down in the later ruling. Nor is it necessary for me to enter into an elaborate disquisition as to the reconcilableness or otherwise of the principles upon which these various rulings proceed. I think it is enough for the purposes of this case to say that the point of law which requires determination is of a simple character and need not be complicated with the *ratio decidendi* of the various rulings which have been cited.

I hold it to be a correct proposition of law that a Court executing a decree is bound by the terms of that decree and cannot go behind them. It is equally true as a general proposition that such Court can neither add to such a decree nor vary its terms. But it is also true that when a decree is put into execution the proceedings taken therefor amount to a separate litigation in which the parties can enter into a compromise much in the same manner as in a regular suit. This I take to be the effect of s. 375 of the Code of Civil Procedure read with s. 647 of that enactment, and this view is fortified by the principle upon which my brother Straight and myself decided the case of *Sarju Prasad* v. *Sita Ram* (1).

Now, when in execution proceedings any arrangement amounting to a compromise has been arrived at between the decree-holder and the judgment-debtor, the Court executing the decree is bound to give effect to such compromise, subject of course to the limitations indicated by s. 375 of the Code, in which the word *suit* must in execution proceedings be read to mean "*execution of decree*," that is, *mutatis mutandis*, which s. 647 of the Code implies. Further, because such a compromise must be according to law or as s. 375 terms it, *a lawful agreement or compromise*, the provisions of s. 257A become applicable, and, so long as these requirements are satisfied, the compromise becomes a part of the decree itself and can be given effect to in execution of such a decree, at least as between the decree-holder and the judgment-debtor, as was held by the Madras Court in *Yella Chetti* v. *Munisami Reddi* (2). I hold further, that when such a compromise has been duly arrived at and

(1) I. L. R., 10 All. 71. (2) I. L. R., 6 Mad. 101.

sanctioned by the Court executing the decree, neither the decree-holder nor the judgment-debtor can resile from the position which they thus deliberately took up in the matter of the compromise. I go even further, and hold that, even if such a compromise is irregularly sanctioned by the Court executing the decree—the irregularity not amounting to want of jurisdiction—the compromise must take effect unless the order sanctioning it is set aside by the procedure required by the law for such a purpose. But so long as the order sanctioning the compromise stands, the parties are bound by it in all proceedings relating to the execution of the decree, and where they have acted upon the compromise they are estopped thereafter from questioning its validity.

The general principle upon which this view proceeds was laid down by the Lords of the Privy Council in *Pisani* v. *Attorney-General of Gibraltar* (1) which was applied by their Lordships to Indian cases in *Sadasiva Pillai* v. *Ramalinga Pillai* (2) which, indeed, is the leading case upon the subject, and applicable in principle to the case now before me. This appears from the observations made by Oldfield, J., in his dissentient judgment in the earlier Full Bench ruling of this Court in *Debi Rai* v. *Gokal Prasad* (3) and is consistent with the conclusion at which the later ruling of the Full Bench in *Sita Ram* v. *Dasrath Das* (4) arrived, as also with the Division Bench ruling of this Court in *Ganga* v. *Murlidhar* (5). It is enough for me to say that I am bound by the Privy Council rulings, and that for the purposes of this case, I am content with the conclusions at which the two rulings of this Court last cited arrived.

Now, in the present case, the arrangement was contained in the application of the judgment-debtor's brother Muhammad Ibrahim, dated the 14th June, 1884. That arrangement was to the effect that, "should Muhammad Sulaiman fail to pay the amount of the decree, then it may be recovered from Muhammad Ibrahim." The order of the Court, dated the 4th July, 1884, shows that this arrangement was accepted by the decree-holder-respondent and by

(1) L. R., 5 P. C. 516.
(2) L. R., 2 I. A. 219.
(3) I. L. R., 3 All. 385.
(4) I. L. R., 5 All. 492.
(5) I. L. R., 4 All. 240.

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the judgment-debtor-appellant; that it was sanctioned by the Court; and that it was in consequence of such compromise that the judgment-debtor's property was released from attachment. It has been found further by the lower appellate Court that this compromise was acted upon "by paying Rs. 200 cash and one, at all events, of the subsequent instalments." There is nothing in that compromise to show that it was intended either to extinguish the decree, or to create any relation other than that of a decree-holder and judgment-debtor between the parties to this appeal. The decree therefore subsists as against the judgment-debtor-appellant, though, as I have already explained, its execution has been modified by the compromise above-mentioned. It is, indeed, in accordance with the terms of that compromise that the decree-holder-respondent has prayed for execution of his decree, and the Courts below have allowed that execution.

I hold that under such circumstances the order of the Courts below is correct, for the decree still subsists and is enforcible against the judgment-debtor-appellant according to the above-mentioned compromise.

For these reasons I dismiss the appeal with costs.

Appeal dismissed.

1888
November 21.

Before Mr. Justice Straight and Mr. Justice Mahmood.

CHEDI LAL AND OTHERS (DEFENDANTS) *v.* BHAGWAN DAS AND OTHERS (PLAINTIFFS.)*

Mortgage—Decree enforcing hypothecation—Satisfaction of decree by person not subject to legal obligation thereunder—Suit for contribution brought by such person against judgment-debtors—Gratuitous payment—Act IX of 1872 *(Contract Act), ss.* 69, 70—"*Lawfully.*"

The widow of *D* a separated Hindu, hypothecated certain immoveable property which had belonged to her husband. The immediate reversioners to *D's* estate were his nephew *S.* and the three sons of his brother *O.* After the widow's death, the mortgagee put his bond in suit, impleading as defendants *S,* two of *S's* four sons and the three sons of *O.* Only the three last-mentioned persons resisted the suit; and

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* Second Appeal No. 1118 of 1886 from a decree of W. R. Barry, Esq., District Judge of Gházipur, dated the 5th April, 1886, reversing a decree of Pandit Ratan Lal, Subordinate Judge of Gházipur, dated the 12th September, 1885.