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enforced his right and put an end to the instalments. As he did not apply for execution within three years of the date of the last application, his present application is time-barred. If he subsequently consented to take the amount due under the decree by instalments, that was an agreement within the meaning of section 257A, and not having been made with the sanction of the Court which passed the decree was void. In either view, therefore, the decree-holder is not entitled to execute the decree, and the order of the Court below is right. I accordingly dismiss the appeal with costs.

Appeal dismissed.

Before Mr. Justice Banerji and Mr. Justice Richards.

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December 14.

LACHMAN DAS AND OTHERS (JUDGMENT-DEBTORS), v. CHATURBHUJ DAS AND ANOTHER (DECREE-HOLDERS).

Civil Procedure Code, section 231—Act No. V of 1881 (Probate and Administration Act), section 92—Execution of decree—One of several joint decree-holders not competent to give a full discharge for the amount of the decree—Executors.

Held that one out of several joint decree-holders is not competent to give a valid discharge for the amount of the joint decree, and his position in this respect is not affected by the fact that he and his fellow-decree-holders are co-executors. *Tammam Singh v. Lachmin Kumari* (1) and *Moti Ram v. Mannu Prasad* (2) followed.

THIS was an application for execution of a decree passed in favour of four persons who had obtained probate of the will of one Babu Raghunath Das. The application was made by two of the decree-holders for the benefit of all, under the provisions of section 231 of the Code of Civil Procedure, the applicants alleging that the other two decree-holders were unwilling to join them in making the application. The decree under execution was based upon a compromise, which provided that a receiver should be appointed who was to recover the amount of a certain other decree in favour of the judgment-debtors against a person whose estate was under the Court of Wards. One of the conditions of the decree was that the judgment-debtors should be personally liable to satisfy the decree if they realized and

* First Appeal No. 9 of 1905, from a decree of Rai Muta Prasad, Subordinate Judge of Benares, dated the 3rd of December 1904.

(1) (1904) I. L. R., 26 All., 318. (2) (1904) I. L. R., 26 All., 334.

appropriated any part of the money payable under the decree for which the Court of Wards was liable. The judgment-debtors pleaded that the decree had been satisfied by payment made by the receiver to Musammat Saraswati, one of the decree-holders, who had already certified payment and satisfaction of the decree to the Court. The decree-holders replied that such payment, if made, was not made by the receiver, but by the judgment-debtors themselves, and anyhow was not a legal discharge of the decree. The executing Court (Subordinate Judge of Benares) found that the decree-holders' contention was correct; that whatever payment the judgment-debtors had made was made by them to Musammat Saraswati and did not operate as a discharge of the decree. That Court accordingly disallowed the judgment-debtors' objections. The judgment-debtors appealed to the High Court. Issues were referred to the lower Court as to whether the receiver had realized the amount of the decree, and, if so, to whom did he pay the amount realized? and whether the judgment-debtors or any of them had received or realized and converted to their own use any part of the amount due under the decree in question? The finding on these issues was that a sum of Rs. 58,000 had been realized by Mathura Das, one of the judgment-debtors, on account of the decree, and had been appropriated by the judgment-debtors to their own purposes. On return of the findings the appeal was put up for final disposal.

The Hon'ble Pandit *Sundar Lal* and Babu *D. N. Ohdedar*, for the appellants.

Babu *Jogindro Nath Chaudhri* and Dr. *Satish Chandra Banerji*, for the respondents.

BANERJI and RICHARDS, JJ.—This appeal arises out of an application made by two out of four decree-holders for execution of a decree passed in favour of four persons who obtained probate of the will of one Babu Raghunath Das. They made their application under the provisions of section 231 of the Code of Civil Procedure, alleging that the other decree-holders were unwilling to join in the application, and they prayed that the decree might be executed at their instance for the benefit of all the decree-holders. The decree was passed upon a compromise which provided that a receiver was to be appointed who should recover the amount

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of a certain other decree due to the judgment-debtors by a person whose estate was under the management of the Court of Wards. One of the conditions of the decree was that the judgment-debtors would be personally liable to satisfy the decree if they realized and appropriated any part of the money payable under the decree for which the Court of Wards was liable. It is contended on behalf of the appellants, who are the judgment-debtors, that they have not committed any breach of the conditions of the decree and that the decree-holders are not entitled to proceed personally against them. Upon this question we referred an issue to the Court below, and the finding of that Court is that the amount of the decree paid by the Court of Wards was in fact realized by the judgment-debtors themselves and not by the receiver appointed by the Court. We do not think it necessary to decide whether in reality the amount was withdrawn by Mathura Das, judgment-debtor. As a matter of fact the cheque was made payable in his favour and the money was drawn by him from the Bank. Upon the evidence we have little doubt that it was Mathura Das who directed the disbursement of the money ; but even if it be assumed that the money was disbursed by the receiver, it is clearly proved by the evidence that a large amount was paid over to Mathura Das, *viz.* a sum of Rs. 58,000, so that a part of the amount of the decree which was to satisfy the decree in this case did go into the pocket of Mathura Das and a breach of one of the conditions of the decree was thus committed.

It is next urged that this payment to Mathura Das was not made until after the decree in the present case had been satisfied by a payment made to Musammatt Saraswati Bibi, one of the decree-holders, and that under the terms of the compromise and the decree the judgment-debtors were entitled to appropriate the surplus after the decree was satisfied. This leads to the question whether a payment was made to Saraswati Bibi, so as to satisfy the decree. Holding the view that we do upon the next question which arises in the case we do not deem it necessary to decide whether any payment was made to Saraswati Bibi, though there are circumstances which render even this somewhat suspicious. Assuming that payment was made to Saraswati Bibi, as alleged, we are of opinion on the evidence that the payment was not made

to her as decree-holder. She is alleged to be a beneficiary under the will of Babu Raghunath Das. It seems that if any payment was made it was made in her capacity as beneficiary. Even assuming again that the payment was made to her as one of the decree-holders, we are unable to hold that such payment can operate as a discharge of the decree against all the decree-holders. It has been held by this Court in *Tamman Singh v. Lachmin Kunwari* (1) and *Moti Ram v. Hannu Prasad* (2), and it is not disputed, that one of several decree-holders cannot give a discharge for the whole amount of the decree. It is, however, contended that the fact that the decree-holders in this case were executors makes a difference. We are unable to see that this distinction is well founded. The Code of Civil Procedure recognises no distinction between decree-holders who are executors and other decree-holders. Under section 231 one of several decree-holders may apply for execution for the benefit of all the decree-holders. The inference from the provisions of this section is irresistible, that one of several decree-holders cannot give a full discharge for the amount of the decree, as held in the cases to which we have referred. It is true that under section 92 of the Probate and Administration Acts, 1882, one of several executors has the power to release a debt due to the deceased, but that can only be when the debt subsists as a debt due to the deceased and not when it has merged into a decree in favour of all the executors. We think the provisions of section 92 of the Probate and Administration Act do not help the appellants. As a discharge was not given by all the decree-holders, and as payment was not certified by all of them, the payment to Musammat Saraswati Bibi, if made at all, cannot exempt the appellants from liability to the respondents, the other holders of the decree. We are therefore of opinion that the Court below was right in granting the application for execution, and we accordingly dismiss the appeal with costs.

Appeal dismissed.

(1) (1904) I. L. R., 26 All., 318.

(2) (1904) I. L. R., 26 All., 834.

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