

cash, we think the court below was wrong. It is quite clear on the construction of the *qabuliat* the defendants agreed to deliver the produce as part of their rent. The suit was brought in the Revenue Court and the claim which the plaintiffs made to it was as rent. In the ruling referred to the plaintiffs sued in the Civil Court to recover the *rasum zamindari* as something over and above the rent. The ruling accordingly does not apply. On the second point we think that the plaintiffs were entitled to the interest on the Rs. 200 up to the time of payment into court. The parties very properly, instead of prolonging the litigation have agreed to a lump sum for the interest and the value of the produce. We allow the appeal, set aside the decree of the court below and restore the decree of the first court with Rs. 10 added. We wish to say that the calculation of Rs. 24 as the value of the produce is not to be taken as a final decision, that this is the value for all time. The value will necessarily vary in different years. The appellants will have their costs both in this and the lower appellate court.

Appeal allowed.

APPELLATE CIVIL.

1916
February, 11

Before Mr. Justice Piggott and Mr. Justice Walsh.

TAJ SINGH (JUDGEMENT-DEBTOR) v. JAGAN LAL (DECREE-HOLDER). *
Civil Procedure Code (1908), order XXI, rule 16—*Execution of decrees—Res judicata.*

On application by a person to have his name substituted as decree-holder upon the ground that he was in fact the true owner of the decree, an order was passed, after notice to the judgement-debtor, permitting the applicant to execute the decree as its transferee. Held on application for execution of the decree that the judgement-debtor was not entitled again to raise the question of the validity of the transfer of the decree to the applicant. *Oman Prasad v. Durlab Shankar* (1) followed.

THE facts of this case were as follows :—

A mortgage decree was passed in favour of one Dule Ram in 1911. After his death his son Lallu Mul applied for a decree absolute, which was passed in 1912. The respondent Jagan Lal brought a

* First Appeal No. 175 of 1915, from a decree of Ganga Sahai, Subordinate Judge of Moradabad, dated the 17th of April, 1915.

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regular suit against the said Lallu Mul and others to have it declared that he was the real owner of the decree. This suit was decreed in 1914. The appellant Taj Singh, who was the purchaser of a portion of the mortgaged property, was not a party to this suit. In 1914, Jagan Lal applied under order XXI, rule 16, for permission to execute the mortgage decree on the ground of his being the real owner. Taj Singh had notice of this application, but raised no objections at that time. On a subsequent application for execution Taj Singh raised two objections; (1) that his liability under the decree had been discharged by payment to Dule Ram; and (2) that Jagan Lal's suit was fraudulent and collusive and he was not the owner of the decree. The trial court held that the alleged payment not having been certified could not be recognized and that the objection to Jagan Lal's title not having been raised at the proper time could not be raised now. Taj Singh appealed to the High Court.

Maulvi *Shaft-uz-zaman*, for the appellant :—

An application under order XXI, rule 16, is an application for execution of a decree. No separate application for substitution of the name of the real owner of the decree is either required by that rule or was made by Jagan Lal. The proceedings were proceedings in execution of a decree, and it has been held that explanation IV of section 11 of the Code of Civil Procedure does not apply to such proceedings; so that, if a judgement-debtor omits to raise an objection at an early stage of the execution proceedings, he is not thereby estopped from raising it at a subsequent stage of the execution. It would of course be different if the appellant had raised the objections now put forward and they had been decided against him. There has not yet been any adjudication upon the merits of the objections, and they are not barred by the principle of *res judicata*; *Kabian Singh v. Jagan Prasad* (1), *Ram Kirpal v. Rup Kuari* (2). I am entitled to raise the objection as to part satisfaction, which really amounted to a relinquishment so far as the appellant's share in the property is concerned.

(1) (1915) I. L. R., 37 All., 589. (2) (1888) I. L. R., 6 All., 269.

The Hon'ble Dr. *Sundar Lal*, for the respondent, was not called upon, but mentioned the case of *Oman Prasad v. Durlab Shankar* (1).

* PIGGOTT and WALSH, JJ. :—There was a decree passed nominally in favour of one Dule Ram. The respondent Jagan Lal, in the course of a suit against Dule Ram's heirs, obtained a decree to the effect that he was himself the beneficial owner of the decree. Having applied to the proper court for that purpose, he obtained an order under order XXI, rule 16, of the Code of Civil Procedure granting him permission to execute the decree as transferee of the same. Before that order was passed the present appellant, who was on the record as one of the judgement-debtors, had received notice of Jagan Lal's application. He took no objection to the same and submitted to the order granting the said application. Subsequently Jagan Lal applied to the Court to take certain steps to execute the decree by sale of the property concerned. Thereupon the appellant filed an objection in which he said, firstly, that Jagan Lal was not a genuine transferee of the decree, because the whole proceedings between Jagan Lal and the heirs of Dule Ram were collusive and were not binding on him. On this the court below has held that this was an objection which should have been taken in reply to Jagan Lal's application under order XXI, rule 16, and not having been so taken, it was concluded against the present appellant by the order of the court bringing Jagan Lal on the record as transferee of the decree. This decision is supported by a ruling of this Court in *Oman Prasad v. Durlab Shankar* (1), with which we are in agreement. The other point taken by the appellant was that there had been an adjustment of the decree, so far as he himself was concerned, between himself and Dule Ram, during the life-time of the latter. On this the court below has held that this adjustment, never having been certified to the court, cannot be recognized by the court executing the decree. This order is in accordance with the clear provisions of order XXI, rule 2, of the Code of Civil Procedure and we find it to be correct. This appeal therefore fails and we dismiss it with costs.

Appeal dismissed.