1933

In the matter of INDIAN STATES BANK, LTD.

commenced as voluntary and continued as compulsory. There would have been no difficulty about the construction of section 230, if it had not been for a decision of the Chancery Division in England, in *In re Russell Hunting Record Co.* (1), on the construction of section 164 of the English Act of 1862 equivalent to section 210 of the Act of 1908 and to section 231 of the Indian Companies Act. In that case it was decided that when a voluntary winding up is followed by a compulsory winding up, then, for the purposes of the fraudulent preference section, that is, section 164 of the Act of 1862 and section 210 of the Act of 1908, the act of bankruptcy is the presentation of the petition, that is, the presentation of the petition for a compulsory winding up. This case, however, was considered in the case of *In re Havana Exploration Co.; Nathan's claim* (2). There the learned Master of the Rolls came to the conclusion that the wordings of the two sections were completely different, and that a decision on the fraudulent preference section could not be taken to be an authority on the preferential claims section.

I therefore direct the official liquidator to treat the claim for preference by the servants of the company in liquidation as if liquidation commenced from the date of the resolution for the voluntary winding up.

APPELLATE CIVIL

Before Mr. Justice Young and Mr. Justice Rachhpal Singh

MURARI LAL AND ANOTHER (DEFENDANTS) *v.* RAGHUBIR SARAN AND OTHERS (PLAINTIFFS)*

1933
November, 27

Civil Procedure Code, order XXI, rules 2 and 16—Execution by assignee of decree—Uncertified payment—Whether judgment-debtors can raise the plea of payment which has not been certified or recorded within limitation.

First Appeal No. 386 of 1932, from a decree of Pran Nath Agha, Additional Subordinate Judge of Moradabad, dated the 11th of July, 1932.

(1) [1910] 2 Ch., 78. (2) [1916] 1 Ch., 8.

Upon an application under order XXI, rule 16 of the Civil Procedure Code by the assignee of a decree the judgment-debtor can not raise the plea of payment and satisfaction of the decree if the payment has not been certified or recorded under order XXI, rule 2, within the period of limitation. It makes no difference, in this respect, whether the payment pleaded is sought to be proved against the decree-holder or his assignee. The language of order XXI, rule 16, makes it perfectly clear that as far as execution is concerned there is no distinction between a case where the decree-holder applies for execution and a case where an assignee does so; the decree is to be executed in the same manner and subject to the same conditions as if the application were made by the decree-holder.

Dr. *S. N. Sen* and Mr. *A. M. Gupta*, for the appellants.

Messrs. *P. L. Banerji* and *S. N. Seth*, for the respondents.

YOUNG and RACHHPAL SINGH, JJ.:—This is an appeal by the assignee of a decree against the order passed by the court below holding that the decree which he had purchased has been satisfied by the judgment-debtors.

The facts which have given rise to this appeal, put briefly, are as follows. There was a partition suit fought between Sahu Raghubir Saran and others, and Raja Ram and others. On the 28th of February, 1929, the dispute between the parties was compromised, one of the stipulations being that Sahu Raghubir Saran and others would pay a sum of Rs.5,000 to Raja Ram, Raj Kishan and Bhagwati Sarup, decree-holders. It would appear that after the passing of this decree Bhagwati Sarup separated from the other two decree-holders, who were allotted the decree in question under which Sahu Raghubir Saran and others were to pay a sum of Rs.5,000. On the 23rd of June, 1931, Raja Ram and Raj Kishan executed a deed of assignment under which they assigned the rights in the entire decree to Murari Lal, appellant. In the deed of assignment it was stated that a sum of Rs.700 had been realized and the balance was still due on account of the aforesaid decree. On the 4th of February, 1932, Murari Lal made an application containing two prayers. He informed the court that

1933

MURARI LAL v. RAGHUBIR SARAN

he had purchased the decree and asked that his name should be substituted in place of the names of the original decree-holders. The other prayer was that he should be allowed to recover the amount due on the decree which according to him was a sum of Rs.4,300 on account of principal and Rs.731 on account of interest. Sahu Raghubir Saran and others, the judgment-debtors, resisted this application on the plea that the entire amount due under this decree had been paid by them to the original decree-holders and, therefore, nothing was due. One of the payments is said to have been made on the 28th of February, 1929, in cash. As regards the other payment of Rs.1,700 we do not know the date. It is agreed between the parties that these alleged payments were not certified as they should have been under rule 2, order XXI of the Civil Procedure Code. The learned Subordinate Judge held that the payments were proved by the judgment-debtors and that it was open to them to prove the payment which had not been certified. He, therefore, dismissed the application of the appellant on the ground that the decree had been satisfied. The present appeal has been preferred by the appellant against that order.

Rule 2, order XXI, relates to the payments made towards the satisfaction of decrees. Sub-clause (1) of rule 2, order XXI, says that "Where any money payable under a decree of any kind is paid out of court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the court whose duty it is to execute the decree, and the court shall record the same accordingly." This is applicable to the case in which the decree-holder makes an application certifying that a payment has been made to him towards the satisfaction of a decree. In such a case there is no question of limitation. It is open to the decree-holder to make an application admitting the receipt of the amount at any time he likes. Clause (2) of this rule says

that "The judgment-debtor also may inform the court of such payment or adjustment, and apply to the court to issue a notice to the decree-holder to show cause, on a day to be fixed by the court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the court shall record the same accordingly." Clause (3) says that "A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognized by any court executing the decree." Article 174 of the second schedule of the Indian Limitation Act prescribes the period within which the judgment-debtor should make his application in respect of the payment alleged to have been made towards the satisfaction of the decree. Such an application has to be made within a period of 90 days. If this is not done, no court executing the decree will recognize the payments said to have been made. Of course, it is open to the judgment-debtor, if his application for recognizing the payment has been dismissed, to sue the decree-holder and to recover the amount which he may have paid. But so far as the court executing the decree is concerned, he will not be allowed to prove that he had made a payment, if the application to that effect is not made within a period of 90 days. The learned counsel for the appellant has argued before us that as in the present case the judgment-debtor did not make an application asking the court to certify the payments alleged to have been made within 90 days, the court below was wrong in going into the question as to whether or not the payments had been made. It appears to us that this contention is correct and must, therefore, prevail. The other side has relied on a ruling, *Raghunath Govind* v. *Gangaram Yesu* (1). This ruling is based on the view taken by the Madras High Court in two rulings in *Ponnusami Nadar* v. *Letchmanan Chettiar* (2) and

(1) (1923) I.L.R., 47 Bom., 643. (2) (1911) I.L.R., 35 Mad., 659

1933

MURARI LAL v. RAGHUBIR SARAN

Ramayya v. *Krishnamurti* (1). Rule 16, order XXI, enacts that "where a decree . . . is transferred . . . the transferee may apply for execution of the decree to the court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder." It appears to us that the plain meaning of the language of rule 16 is that there is no difference between the person who has obtained the decree and his transferee so far as the execution of the decree is concerned. Where a transfer has been made, the transferee has to make his application to the court which passed the decree and not to the court which may be executing it. It is contended on behalf of the respondents that this makes a difference. It is conceded that if there had been no transfer of the decree, then the court could not have permitted proof of those payments because of article 174 of the second schedule of the Indian Limitation Act. But it is contended that when an assignee makes an application to the court which passed the decree, asking that he should be permitted to execute his decree on the ground that it has been assigned to him, then it is open to the judgment-debtors to contend that the decree had been satisfied, though the payment may not have been certified as provided for under rule 2, order XXI of the Civil Procedure Code. This view found favour in the three cases cited above. It has been pointed out by the learned counsel for the appellant that the matter was reconsidered quite recently in a Full Bench ruling, *Subramanyam* v. *Ramaswami* (2). It was there held that in an application under order XXI, rule 16 of the Civil Procedure Code by a transferee decree-holder the judgment-debtors could not plead an uncertified adjustment of the decree as an objection to its execution. The contention raised by the learned counsel for the respondents was also raised in that ruling, but it did not find favour with the Full Bench which decided that case.

(1) (1916) I.L.R., 40 Mad., 296. (2) (1932) I.L.R., 55 Mad., 720.

A perusal of this case would show that on the question which we are considering there was considerable divergence of opinion between the Judges of the Madras High Court. Some of the Judges took the view that where a transferee wishes to execute the decree and makes an application to the court which passed it, then it is open to the judgment-debtor to plead payments notwithstanding the fact that they were not certified, while others took a different view and held that such payments could not be recognized even in cases where an application for execution has been made by a transferee. The Full Bench case of *Subramanyam* v. *Ramaswami* (1) was one in which the decree had been transferred to another court and the application for execution was made by the transferee for execution to that very court. The facts in the case before us are the same. The learned Judges held that an application made by the transferee in these circumstances was an application for execution of a decree and, therefore, all the rules relating to certification of payment were applicable to the case. The Bombay decision in *Raghunath Govind* v. *Gangaram Yesu* (2) proceeds on the view that there is a difference where a decree-holder himself applies for execution as distinguished from an application made by a transferee, and holds that where an assignee of the decree-holder applies under rule 16, order XXI of the Civil Procedure Code, then it is open to the judgment-debtors to show that an uncertified payment satisfied the decree. The reason given is that in one case an application for adjustment is made to the court executing the decree while in the other an application is made not to the court which is executing the decree but to the court which passed the decree. With the utmost possible respect we find it difficult to follow the reasoning of the learned Judges. Rule 16, order XXI relates to execution of decrees by assignees. The rule enacts that a "transferee may apply for the execution of the decree to the court which passed

(1) (1932) I.L.R., 55 Mad., 720. (2) (1923) I.L.R., 47 Bom., 643.

1933

MURARI LAL v. RAGHUBIR SARAN

it and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder". A perusal of rule 16 makes two points perfectly clear. The first is that when an assignee makes an application to the court which passed the decree his application is one for execution. The second and the most important point is that the decree is to be *"executed in the same manner and subject to the same conditions as if the application were made by such decree-holder"*. This makes it perfectly clear that there is to be no distinction, so far as execution is concerned, between a case where the decree-holder applies and a case in which an assignee makes such an application. The view taken by the learned Judges of the Bombay High Court is opposed to the rule laid down in rule 16 that a "decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder". In our opinion, the rule lays down that the assignee is entitled to execute his decree in the same manner as the decree-holder, and the judgment-debtors are entitled to enforce the equities which they could have enforced as against the decree-holder. If the judgment-debtors could have proved a payment as against the decree-holder, then they can equally do so as against the assignee. But no plea which is not available to them against the decree-holder can be set up by them against the assignee. There is no warrant for saying that a transfer by the decree-holder can in any manner improve the position of the judgment-debtors. If they could not prove a payment as against the decree-holder because of the law of limitation, it is not easy to understand why they should be allowed to do so as against his transferee.

There is one other aspect of the case to be considered. Rule 2, order XXI, Civil Procedure Code, does not refer to a court executing the decree but refers to the court *whose duty it is to execute the decree*. There are cases in which the decree-holder has not applied for execution.

If payment is made before such execution has been asked for, then the application to have it certified has to be made to the court *whose duty it is to execute the decree.* Similarly an application by the assignee has to be made to the same court whose duty it is to execute the decree. Why in one case the court must decline to hear the plea if the payment is not certified, while in the other it should have such power, is not easy to understand. All that the judgment-debtor is entitled to ask the court is that his position should not be worse than it would have been if the original decree-holder had been applying for execution. But there can be no other equity in his favour. We are clearly of opinion that having regard to the provisions of rule 2, order XXI of the Civil Procedure Code and article 174 of the Indian Limitation Act it is not open to a judgment-debtor to prove adjustment or satisfaction, if he did not take steps to have the same certified within a period of 90 days from the date on which the alleged payment or adjustment was made. This rule would apply whether the payment pleaded is sought to be proved against the decree-holder or his assignee. The view taken in *Raghunath Govind* v. *Gangaram Yesu* (1) does not appear to be correct. We follow the Full Bench ruling reported in *Subramanyam* v. *Ramaswami* (2).

For the above reasons we allow this appeal, set aside the order passed by the court below and direct that the name of Murari Lal, appellant, be substituted in place of the decree-holders and that he be allowed to execute the decree for the amount due on it. The payment alleged to have been made by the judgment-debtors will not be taken into consideration in the execution proceedings. The appellants will get their costs from the judgment-debtors respondents in both the courts.

(1) (1923) I.L.R., 47 Bom., 643. (2) (1932) I.L.R., 55 Mad., 720.