

1937

GIRENDRA  
NARAIN  
v.  
GANGA  
NARAIN

appellant was that a sub-lessee or mortgagee of lessee rights is not *ipso facto* brought into direct relations with the landlord lessor. That principle cannot, in our opinion, be applied to a case where the mortgagee has paid rent to the lessor and the latter has accepted it from him. The Nagpur and Lahore cases cited are decisions by single Judges and are also distinguishable on the facts. As to the Calcutta decisions, the learned counsel for the plaintiff respondent has invited our attention to the cases of *Debnarayan Dutt v. Chunilal Ghose* (1), *Dwarikanath Ash v. Priyanath Malki* (2) and *Kshirode Bihari Datta v. Mangobinda Panda* (3), as cases in which the opposite view has been taken. We are content to say that we agree with the judgments of SIR LAWRENCE JENKINS in the case of *Debnarayan Dutt v. Chunilal Ghose* (1), and of LORT-WILLIAMS, J., in the case of *Kshirode Bihari Datta v. Mangobinda Panda* (3). We might also refer to the decision of their Lordships of the Privy Council in *Khwaja Muhammad Khan v. Husaini Begam* (4).

For the reasons given above we are of opinion that this appeal has no force and we dismiss it with costs.

Before Mr. Justice Rachhpal Singh and Mr. Justice Ismail

1937  
December, 10

THOMAS SKINNER (JUDGMENT-DEBTOR) v. RAM RACHPAL  
(DECREE-HOLDER)\*

*Civil Procedure Code, order XXI, rule 2—Payment by judgment-debtor “out of court”—Decree-holder attaching a decree in favour of his judgment-debtor against another person passed by another court and realising the amount of such decree in that court—Not payment “out of court”—Certification not necessary.*

Where in execution of his decree the decree-holder attached another decree in favour of his judgment-debtor against another person passed by another court and realised the money of that decree by executing it in that court, it was held that

\*First Appeal No. 17 of 1936, from a decree of P. D. Pande, Second Civil Judge of Meerut, dated the 4th of November, 1935.

(1) (1913) I.L.R. 41 Cal. 137.

(2) (1916) 22 C.W.N. 279.

(3) (1934) I.L.R. 61 Cal. 841.

(4) (1910) I.L.R. 32 All. 410.

this was not a case of a payment made by the judgment-debtor "out of court" within the purview of order XXI, rule 2 of the Civil Procedure Code and no certification was necessary.

Where a decree-holder makes an application for execution and in pursuance of an order passed by the executing court realises a certain amount from his judgment-debtor, then the payment will be deemed to have been made in court and not "out of court". The cases in which a payment is made without the intervention of the court, and therefore the court knows nothing about it, have to be differentiated from those in which the payment is made after the court has been moved to pass an order in favour of the decree-holder, and the court is cognizant of what is going on. No certification is necessary in the latter class of cases.

Messrs. *M. A. Aziz and Ram Nama Prasad*, for the appellant.

Mr. *Shiva Prasad Sinha*, for the respondent.

RACHHPAL SINGH and ISMAIL, JJ.:—This is a judgment-debtor's first appeal arising out of an order passed in execution proceedings.

The facts which have given rise to the appeal before us can very briefly be stated as follows. One Mst. Kishan Dei instituted a suit against Thomas Skinner to recover possession over some property and mesne profits. On the 28th of August, 1926, the first court passed a decree in favour of Mst. Kishan Dei for possession and also awarded to her a sum of Rs.3,004-13-6 on account of profits with proportionate costs. Thomas Skinner preferred an appeal to this Court against the decree which had been obtained by Mst. Kishan Dei. During the pendency of the appeal Mst. Kishan Dei obtained possession over the property in suit in that case and also made an application for realising the sum for which she had obtained a money decree and prayed for attachment of three decrees which Thomas Skinner held against one Benarsi Das. This prayer of hers was granted. Subsequently she executed two of these decrees and the finding of the court below is that a total sum of Rs.3,369-10-0 was paid by Benarsi Das and Mst. Kishan Dei filed certificates in the cases in which the two decrees had been

1937

THOMAS  
SKINNERv.  
RAM  
RACHPAL

1937

THOMAS  
SKINNER  
v.  
RAM  
RACHPAL

passed certifying the receipt of the above mentioned amount from Benarsi Das. The result was that these two decrees were declared by the court to be discharged as fully satisfied.

The appeal which had been preferred by Thomas Skinner to this Court was partially allowed and it was declared that Mst. Kishan Dei was only entitled to recover from Mr. Thomas Skinner a sum of Rs.2,972. Thomas Skinner had instituted a suit against Mst Kishan Dei; but after the decree of this Court it became unnecessary for him to proceed with the same. He applied to the court in which that suit was pending, praying that it should be converted into an application under section 144 of the Code of Civil Procedure. That was done and the court, in accordance with the provisions of section 144 of the Code of Civil Procedure, by its judgment dated the 21st of June, 1930, directed that he should be restored possession over the property in suit because of the decree which had been passed by this Court.

Mst. Kishan Dei has assigned her rights in the decree which she obtained from this Court to one Ram Rachpal and this man has now made an application for the execution of that decree.

The application was opposed by the judgment-debtor. It was pleaded by him that nothing was due in respect of the decree which the decree-holder was seeking to enforce. He pleaded that it had been decided *inter partes* in the decision which the court gave in respect of his application under section 144 that the decree-holder would not be entitled to execute his decree till he had rendered accounts and as no accounts had been rendered the decree-holder was not competent to execute the decree. The decree-holder took the plea in the court below that as no application had been made in the court executing the decree certifying any payment towards that decree within the period prescribed, order XXI, rule 2 of the Code of Civil Procedure applies and the judgment-debtor could not be permitted to plead any satisfaction,

1937

---

 THOMAS  
 SKINNER  
 v.  
 RAM  
 RACHPAL

partial or otherwise. The learned Judge of the court below came to the conclusion that the contention raised by the decree-holder was correct. He held that as no steps had been taken to have the payment made to Mst. Kishan Dei by Benarsi Das certified, the judgment-debtor in the present case could not be permitted to plead that payment. It is against that order that the present appeal has been preferred by the judgment-debtor.

The first question which we have to consider in this case is whether the view taken by the court below as regards the application of order XXI, rule 2, to the present case is correct. We have heard learned counsel appearing on both sides and in our judgment the view of the learned Civil Judge is not correct and therefore cannot be sustained. So far as the facts are concerned there is no dispute. Admittedly Mst. Kishan Dei made an application on the 15th of February, 1928, under order XXI, rule 53, praying that three decrees which were held by Thomas Skinner against other persons be attached. In the present case we are concerned only with two of those decrees which were against Benarsi Das. From the record of the execution case it appears that this application was granted and the court passed an order directing that Mst. Kishan Dei was entitled to execute the decrees held by Thomas Skinner against other persons and the order further enjoined that the decree-holder should certify the payments which might be made to him. It appears that the decrees which Thomas Skinner had against Benarsi Das had been passed by the revenue court. Mst. Kishan Dei went to that court and proceeded to recover the amount due from Benarsi Das by way of execution. Benarsi Das, as we have already pointed out, paid a sum of Rs.3,369-10-0 towards the two decrees in full satisfaction.

It has been argued before us by learned counsel for the respondent that order XXI, rule 2, applies to the case and therefore the judgment-debtor was not competent to ask that the payment made by Benarsi Das should be

1937

THOMAS  
SKINNER  
v.  
RAM  
RA CHEPAL

taken into account because no application had been made under order XXI, rule 2.

Now the question which we have to consider is whether this rule has any application to the case before us. We are of opinion that the rule does not apply to it. It appears to us that the rule makes provisions in respect of two kinds of payments. The first is a case where a payment has been made out of court by a judgment-debtor and the other is where the decree is adjusted in whole or in part between the decree-holder and the judgment-debtor. Now so far as the second case is concerned, there is no difficulty. There has been no adjustment of any kind between the decree-holder on the one hand and the judgment-debtor on the other. We have only therefore to consider whether in the case before us it can be said that the payment of which the judgment-debtor wishes to take advantage was made out of court. The argument of learned counsel for the respondent is that the payments made by Benarsi Das should be treated for the purposes of the case before us as having been made out of court and as they were not certified the judgment-debtor cannot be permitted to take advantage of the same. We, however, do not think, having regard to the circumstances of the case before us, that it is correct to say that the payments were made out of court. The decree-holder put his decree in execution against Thomas Skinner and asked that she should be permitted to execute the same with reference to the amount for which she had obtained a decree from the court of first instance. The prayer was for the attachment of the decrees which were standing in favour of the judgment-debtor, Mr. Thomas Skinner. It was in pursuance of an order passed by the executing court that the decree-holder Mst. Kishan Dei was authorised to go to the revenue court and get the amount which was due to Thomas Skinner from Benarsi Das. The payment was made by Benarsi Das in that court and therefore we do not see how it can be argued that it was a payment made

outside the court. Where a decree-holder makes an application for execution and in pursuance of an order passed by the executing court realises a certain amount from his judgment-debtor, then the payment will be deemed to have been made in court and not outside court. The cases in which a payment is made without the intervention of the court have to be differentiated from those in which the payment is made after the court has been moved to pass an order in favour of the decree-holder. Where a judgment-debtor makes a payment outside a court, the court knows nothing about that payment and therefore order XXI, rule 2 ordains that the parties should inform the court about that payment. Similarly if there is an adjustment between a decree-holder and a judgment-debtor of which the court is not aware, the same rule is applicable; but different considerations will prevail where the intervention of court is sought to enforce a decree. If a decree-holder makes an application to the court for execution and obtains an order in his favour, then the court knows what is going on. The court in the present case was informed that a sum of money was due to Thomas Skinner from Benarsi Das and after knowing this the court passed an order authorising Mst. Kishan Dei to realise from Benarsi Das the money which was due to Thomas Skinner. The payment by Benarsi Das was made in the court which had passed the decree against Benarsi Das. So we are clearly of opinion that it cannot be said that this was a payment made outside the court. There may be cases in which a court may pass an order in favour of the decree-holder directing an officer of the court to go and realise a certain sum of money from the judgment-debtor. If the judgment-debtor makes a payment to an officer of the court, it would not be right to hold that that payment has to be certified to the court because it was not made "in court". The payment is made to an officer of the court whose duty it is to go and inform the court as to how he executed its order and there does not seem

1937

---

THOMAS  
SKINNER  
v.  
RAM  
RACHPAL

1937

THOMAS  
SKINNER  
v.  
RAM  
RACHPAL

to be any necessity in a case of this description to insist that the judgment-debtor or the decree-holder should inform the court of the payment. The court will know of the payment without getting any information in that connection. We, in these circumstances, hold that as the payments by Benarsi Das were made to Mst. Kishan Dei after the order of the court executing the decree was passed, they are payments made in court and therefore order XXI, rule 2, has no application. This being our view, it must be held that the decision of the court below is erroneous.

Another point which was pressed before us on behalf of the appellant was that under section 144 of the Code of Civil Procedure proceedings, there was an order passed by the court that the decree-holder will not be entitled to execute the decree unless he has rendered accounts about mesne profits to Thomas Skinner.

It appears to us that having regard to this order which is binding upon the decree-holder, it is not open to her to execute her decree against Thomas Skinner unless she renders accounts of the profits which she had appropriated during her possession over Thomas Skinner's property. Ram Rachpal who is her assignee cannot be in any better position. There is, however, no finding of the court below whether any account has been rendered by the decree-holder. This question will have to be decided by the court below.

For the reasons given above, we allow this appeal and set aside the order passed by the learned Judge and hold that the judgment-debtor Thomas Skinner is entitled to take into account the amounts which Mst. Kishan Dei realised from Benarsi Das. The learned Judge of the court below will find the exact amount realised by Mst. Kishan Dei from Benarsi Das, and Thomas Skinner the judgment-debtor will be given credit for the same towards the satisfaction of the decree of the decree-holder. If it is found that after taking into account the sums paid by Benarsi Das anything is still due to the

decree-holder, then her assignee Ram Rachpal will be able to proceed with his application for execution after he has rendered accounts in respect of the profits realised by Mst. Kishan Dei as directed in the order of the Civil Judge, dated the 21st of June, 1930. The appellant will get his costs in this Court as well as the costs incurred by him in the court below up to the date of our judgment.

1937

THOMAS  
SKINNER  
v.  
RAM  
RACHPAL

### MISCELLANEOUS CIVIL

*Before Mr. Justice Iqbal Ahmad*

JAGANNATH PRASAD (APPLICANT) v. OFFICIAL  
LIQUIDATORS (OPPOSITE PARTIES)\*

1937  
December, 10

*Companies Act (VII of 1913), section 184—Contributories—  
Contract to purchase shares—False statements in prospectus  
—Repudiation of shares—Reasonable time—Before com-  
mencement of winding up.*

The right to repudiate a contract to purchase shares of a company, on the ground of false and misleading statements contained in the prospectus, must be exercised within a reasonable time and in any case before the commencement of proceedings for the winding up of the company. After such proceedings have commenced, the right is no longer available and the shareholder must be placed on the list of contributories in respect of the balance due on his shares.

Mr. *Lalta Prasad*, for the applicant.

Messrs. *Abu Ali and Mansur Alam* (Official Liquidators), for the opposite parties.

IQBAL AHMAD, J.:—This is an application by one Jagannath Prasad under section 183(5) of the Companies Act and the prayer contained in the application is that the applicant's name be removed from the list of contributories prepared by the official liquidators.

It is common ground that the applicant applied for the purchase of one deferred share of the company on the 15th of November, 1923, and paid a sum of Rs.5 on

\*Application in Miscellaneous Case No. 297 of 1934.