

Before Mr. Justice Pigot and Mr. Justice Macpherson.

JOTINDRO NATH CHOWDHRY AND ANOTHER (JUDGMENT-DEBTORS)  
v. DWARKA NATH DEY (DECREE-HOLDER).\*

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December 21.

*Execution of decree—Attachment of decree for money—Sale of decree for money—Suits in formâ pauperis—Court fees recoverable by Government—Civil Procedure Code (Act XIV of 1882), ss. 273, 284, 411.*

Where a plaintiff suing *in formâ pauperis* obtained a decree for money, and the Collector, in pursuance of an order made in his favour at the time when such decree was passed, attached it under section 273 of the Code of Civil Procedure, and subsequently sold the same under section 284,

*Held*, upon the application of the decree-holder for execution of his decree, that the provisions of section 273 did not contemplate the sale of a decree for money, but they showed in what manner the attachment of decrees should be made available on behalf of the attaching person.

*Semble*—The provisions of section 411 of the Code of Civil Procedure do not justify the Court in selling a decree upon the application of the Collector, inasmuch as that section provides that persons who have been successful as paupers shall, so far as the subject-matter of their success is concerned, be liable to satisfy out of what they recover the amount of the fees, which have been for a time, pending the decision of their suit remitted to them.

*Sultan Koer v. Gulzari Lal* (1) and *Tiruvengada Chari v. Vythilinga Pillai* (2) followed.

IN this case Dwarka Nath Dey obtained a decree *in formâ pauperis* for Rs. 1,151 against Jotindro Nath Chowdhry and another person. At the time when the suit was decreed, an order was made in favour of the Collector for the realization of the Court fees due to Government, which ought to have been paid at the time of the institution of the suit. In execution of this order the Collector attached the decree of Dwarka Nath Dey under section 273 of the Code of Civil Procedure, and subsequently sold the same under section 284. The decree was purchased by one Umbica Charan Bose, and it was alleged that

\* Appeal from Order No. 189 of 1891, against the order of R. F. Rampini, Esq., District Judge of 24-Parganas, dated the 8th of June 1891, affirming the order of Babu Radha Krishna Sen, 2nd Subordinate Judge of that district, dated the 25th of April 1891.

(1) L. L. R., 2 All., 290.

(2) I. L. R., 6 Mad., 418.

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the judgment-debtors had paid the decretal amount to Umbicā Charan, who had duly entered satisfaction of the decree.

Subsequently the decree-holder, Dwarka Nath Dey, applied to the Subordinate Judge for execution of his decree. The judgment-debtors objected to the execution on the ground that they had already paid the decretal amount to Umbica Charan Bose, the purchaser of the decree at the sale held at the instance of the Collector for the realization of the value of the court fees due to Government.

The Subordinate Judge overruled the objection of the judgment-debtors, and relying on the authority of *Sultan Koer v. Gulzari Lal* (1) and *Tiruwengada Chari v. Vythilinga Pillai* (2) held that the sale was invalid, and allowed the execution to proceed.

On appeal, the District Judge observed as follows :—

“The Subordinate Judge has come to his finding on the strength of two rulings, viz., *Sultan Koer v. Gulzari Lal* (1) and *Tiruwengada Chari v. Vythilinga Pillai* (2). These rulings lay down that the provisions of section 273 of the present Civil Procedure Code do not contemplate the sale of a decree for money, inasmuch as they lay down that when a Court attaches a decree for money passed by itself, the attachment should be made by an order directing the proceeds of the decree attached to be applied in satisfaction of the other decree; and when a Court attaches a decree for money passed by another Court, then the Court attaching the decree shall, on receiving notice of the attachment, stay execution unless and until—(a) the Court which passed the decree sought to be executed cancels the notice, or (b) the holders of the decree sought to be executed applies to the Court receiving such notice to execute its own decree.

“The appellants’ pleader, however, contends that there is no provision in the Civil Procedure Code actually prohibiting the sale of a decree for money; and further, he relies upon four rulings, viz., *Gholam Mahomed v. Indra Chand Jahuri* (3), *Ganesh Lal Tewari v. Sham Narain* (4), *Ganesh Chunder Chuckerbutty v. Bissessari Debi* (5), and *Naigar v. Bhaskar* (6). I do not, however, find that these rulings support the contention of the appellants’ pleader. The case of *Gholam Mahomed v. Indra Chand Jahuri* is no doubt in his favour, for it says a decree can be sold, though it only explains how a decree can be attached, and not how it can be sold; but it

(1) I. L. R., 2 All., 290.

(4) I. L. R., 6 Calc., 213.

(2) I. L. R., 6 Mad., 418.

(5) I. L. R., 6 Calc., 243.

(3) 7 B. L. R., 318; 15 W. R., 34.

(6) I. L. R., 10 Bom., 444

is a decision given when Act VIII of 1859 was in force, and it has no reference to the provisions of section 273 of the present Civil Procedure Code, and there was no section in Act VIII of 1859 corresponding to section 273 of the present Code. In *Ganesh Lal Tewari v. Sham Narain*, their Lordships of the Privy Council no doubt said, with reference to a decree for mesne profits, that 'if it had been meant to attach and sell the decree, that might have been done.' But the decree was not sold, so this observation is an *obiter dictum*. Moreover, this case too was under Act VIII of 1859, and was therefore decided before section 273 of the present Civil Procedure Code came into force. Then with regard to the case *Ganesh Chunder Chuckerbutty v. Bissessari Debi*, I would only say that I see nothing in the decision which lays down that a decree for money can be sold under the provisions of Act XIV of 1882, or which help me in this case in any way. As for the Bombay case *Naigar v. Bhaskar*, it is no doubt very much in the appellants' favour, for it is a case in which a decree for redemption of a mortgage was actually sold in execution of a decree for money. But the question whether such a decree could be sold in this way was never argued in this case. The sale was objected to on the ground that it had not been properly attached. It seems to have been conceded that if the decree had been attached it could be sold, and the point now at issue was never considered. This decision therefore cannot, I think, outweigh the decision of the Madras and Allahabad High Courts. The weight of authority seems therefore against the appellants.

"The Madras and Allahabad High Courts are against him. The Calcutta High Court has not decided the point under the present Code. The Bombay High Court has taken it for granted.

"Looking at the provisions of section 273 themselves, it certainly seems to me that they do not contemplate the sale of a decree for money. It appears to me that the procedure contemplated therein is that the holder of the decree attached shall apply to the Court to execute the decree, or else that the attaching decree-holder shall himself do so. It has been held that he can do so as the representative of the decree-holder, and as such, it has been said, he is entitled to enforce execution of the decree which he has attached—*Peary Mohun Chowdhury v. Romesh Chunder Nundy* (1).

"The appellant further contends, on the authority of *Rewa Mahton v. Ramkrishna Singh* (2), that as the sale has taken place it must hold good. The case of *Rewa Mahton v. Ramkrishna Singh*, however, is not exactly in point. In that case a sale had taken place in execution of the smaller of two cross decrees, which should never have been executed, as it should have been set off against the decree for the larger amount, and their Lordships of the Privy Council hold that the sale must, nevertheless, stand good, and the property be held to have passed. This is a different thing

(1) I. L. R., 15 Calc., 371.

(2) I. L. R., 14 Calc., 18.

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from the sale of a decree, for which there is no express provision in the Civil Procedure Code, and which would not seem to be contemplated by it, standing good, and from its being therefore impossible still to execute the decree sold, which is the point at issue in this case. Moreover, it is to be observed that in the case of *Tiruvengada Chari v. Vythilinga Pillai* (1) a sale of a decree had taken place in execution of another decree, and yet, nevertheless, it was held not to be a good sale. On the whole, I think the weight of authority is against the appellant. I accordingly dismiss the appeal with costs."

The judgment-debtors appealed to the High Court.

Dr. *Rashbehari Ghose* and Baboo *Jagat Chunder Banerjee* for the appellants.

Baboo *Nandalal Sircar* for the respondent.

The judgment of the Court (PIGOT and MACPHERSON, JJ.) was as follows:—

We do not think it necessary to call upon the learned pleader for the respondent in this case. We think the judgment of the learned District Judge must be affirmed. The learned District Judge has followed the decisions in *Sultan Koer v. Gulzari Lal* (2) and *Tiruvengada Chari v. Vythilinga Pillai* (1), giving effect to the contentions that section 273 was introduced into the Indian Code for the purpose of showing in what manner the attachment of decrees under the Code shall be made available on behalf of the attaching person. This is one of the many cases in which it is much better in following previous decisions simply to say that we follow them instead of discussing them or amplifying language which is already sufficiently complete and satisfactory. Therefore we say no more than that we agree with the learned District Judge and follow the decisions on which he has rested his judgment; but we must say, further, that we are wholly unable to understand in what manner the sale of this decree on the application of the Collector could be justified in law. It is true that the point does not appear to have been taken, and it is true that it is unnecessary for the decision of this appeal to determine whether or not section 411 justifies the Court in selling the decree on the application of the Collector; but we think it right to say, so far as we are entitled in this case to express an opinion, that we are unable to see

(1) I. L. R., 6 Mad., 418.

(2) I. L. R., 2 All., 290.

in what way section 411 justifies the sale of the decree. It stands thus: The State derives a revenue from court-fee stamps. There are persons whom it is thought right to exempt by reason of their poverty from payment in the first instance of court-fee stamps and who are allowed to sue *in formâ pauperis*, and section 411 provides that persons who have been successful as paupers shall, so far as the subject-matter of their success is concerned, be liable to satisfy, out of what they recover, the amount of the fees which have been for a time, pending the decision of their suit, remitted to them. That is reasonable enough; but if the procedure adopted in this instance were according to law, the successful pauper plaintiff would become simply a machine for the recovery of the value of the court-fee stamps on behalf of the public treasury, if upon his success the Collector disposes, not of a certain proportion of what the plaintiff has recovered, but sells the whole of the plaintiff's right in the decree which he has got without waiting for the recovery by the plaintiff of the money for which he has got his decree. In that case, if such were the law, all that the pauper plaintiff has done in the case is to get a decree against the defendant, and before he is able to recover the amount of it from the defendant, he is to see the whole benefit of that decree taken from him by the State in order that it may possess itself of the value of the court-fee stamps remitted to him in the first instance, and (if this be a correct view of the law) remitted to him delusively. We cannot think that this can have been the intention of the Legislature, and we see nothing whatever in the section to justify the sale of the decree obtained by the plaintiff. We dismiss the appeal with costs.

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*Appeal dismissed.*