

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge,
and Mr. Justice E. M. Nanavutty

SARDAR JOGENDRA SINGH (JUDGMENT-DEBTOR-APPELLANT)
v. OUDH COMMERCIAL BANK, LTD., FYZABAD AND
OTHERS (DECREE-HOLDERS-RESPONDENTS)*

1936
October 21

*Civil Procedure Code (Act V of 1908), order XXI, rule 16—
Transfer of decree—Assignee's application for substitution of
name—Objection by one judgment-debtor that assignment
was benami and decree was satisfied—Objection, if can be
entertained by executing court or by court to which execution
is transferred.*

An application under order XXI, rule 16, Civil Procedure Code, for substitution of name of the assignee of a decree in place of the decree-holder can be entertained only by the court which passed the decree and not by the court to which the decree is sent for execution. So the objection by one of the judgment-debtors that the assignee of the decree was merely a *benamidar* for the other judgment-debtor or that the decree had been fully satisfied as the money paid to the decree-holder really belonged to the other judgment-debtor, cannot be entertained by the court to which execution has been transferred. *Taj Singh v. Jagan Lal* (1), *Dwarka Das v. Muhammad Ashfaq Ullah* (2), and *Prithvi Chand Lal Chaudhri v. Satya Kinkar Das* (3), relied on.

Messrs. *Ram Bharose Lal and Suraj Sahai*, for the appellant.

Messrs. *Radha Krishna Srivastava and K. P. Misra*, for the respondents.

SRIVASTAVA, C.J., and NANAVUTTY, J.:—This is an execution of decree appeal by the judgment-debtor. On the 30th of March, 1932, the Oudh Commercial Bank, Fyzabad, obtained a simple money decree jointly against Sardar Jogendra Singh, appellant and Raja Audhesh Narain Singh, taluqdar of Kalakankar, from the court of the Civil Judge of Fyzabad. The decree

*Execution of Decree Appeal No. 83 of 1935, against the order of Babu Bhagwat Prasad, Civil Judge of Lucknow, dated the 23rd of September, 1935.

(1) (1916) I.L.R., 38 All., 289. (2) (1925) I.L.R., 47 All., 86.

(3) (1932) I.L.R., 11 Pat., 94.

1936

SARDAR
JOGENDRA
SINGH
v.
OUDH
COMMERCIAL
BANK,
LIMITED,
FYZABAD

Srinivasa,
C.J. and
Ziaul Hasan,
J.

was transferred for execution to the Civil Judge of Lucknow. During the pendency of the execution proceedings in the Lucknow court the Oudh Commercial Bank made an assignment of the decree in favour of Kuar Suresh Singh, respondent, a brother of Raja Audhesh Narain Singh, on the 28th of August, 1934, Kuar Suresh Singh made an application under order XXI, rule 16 of the Code of Civil Procedure to the Civil Judge of Fyzabad who on the 23rd of April, 1935, ordered the name of Kuar Suresh Singh to be brought on the record of the execution case in place of the original decree-holder and that notice of it should be sent to the court executing the decree. In the meantime an application was made by the appellant on the 10th of September, 1934, in the court of the Civil Judge, Lucknow, alleging that the consideration for the sale-deed dated the 28th of August, 1934, was in fact paid by Raja Audhesh Singh and the decree had in consequence been discharged in full. It was alleged in the alternative that Raja Audhesh Singh was the real purchaser and Kuar Suresh Singh was only a *benamidar* for him. On these grounds it was prayed that the decree should be treated as fully satisfied. The learned Civil Judge of Lucknow has dismissed the application on the ground that he had no jurisdiction to entertain it. Sardar Jogendra Singh has come to this Court in appeal against the last-mentioned order. His learned counsel does not dispute the proposition that an application under order XXI, rule 16 of the Code of Civil Procedure can be entertained only by the court which passed the decree and not by the court to which the decree is sent for execution. He however contends that the application made to the Civil Judge of Fyzabad was not in proper form as it did not contain any prayer for execution and merely asked for substitution of the names of Kuar Suresh Singh in place of the decree-holder. He further contends that the objections raised by him in the application

dated the 10th of September, 1934, were not barred by order XXI, rule 16 of the Code of Civil Procedure and could be entertained by the Lucknow court. As regards the first objection he has not produced any copy of the application under order XXI, rule 16 nor has he summoned the file of the case containing the said application. We have therefore nothing before us to show the contents of the said application. In the circumstances it is impossible to accept the contention that the application was not in proper form or was not in order. The order which was passed by the Civil Judge of Fyzabad on this application shows that it was substantially an order under order XXI, rule 16 of the Code of Civil Procedure and the application which led to the passing of that order is referred to as an application under order XXI, rule 16 of the Code of Civil Procedure. After ordering the substitution of the name of Kuar Suresh Singh in place of the Bank the Civil Judge expressly ordered that notice of it should be sent to the executing court. The first contention must therefore be overruled.

As regards the second objection the second proviso of order XXI, rule 16 runs as follows:

“Provided that where the decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.”

If therefore the judgment-debtor appellant wanted to contend that Kuar Suresh Singh was merely a *benamidar* for Raja Audhesh Narain Singh or in other words that the decree had in fact been transferred to Raja Audhesh Narain Singh and could not therefore be executed against him he was bound to raise that objection in the course of proceedings taken on the application under order XXI, rule 16 of the Code of Civil Procedure. The other objection about the decree having been fully satisfied as the money paid to the decree-holder really belonged to Raja Audhesh Narain Singh is in substance the same objection in a

1936

SARDAR
JOGENDRA
SINGH
v.
GUDH
COMMERCIAL
BANK,
LIMITED,
FYZABAD

*Srivastava,
C.J. and
Nanavatty,
J.*

1936

SARDAR
JOGENDEB
SINGH
v.
OUDH
COMMERCIAL
BANK,
LIMITED,
FYZABAD

Srivastava,
C.J. and
Nanavaty,
J.

different form. In any case the said objection also afforded a complete answer to the application under order XXI, rule 16 because if the objection had succeeded there could be no question of the decree being executed at the instance of the transferee. It was therefore the duty of the appellant to raise the objection in answer to the application under order XXI, rule 16 of the Code of Civil Procedure. It may be noted that the rule expressly provides that notice of the application shall be given to the judgment-debtor. It must be presumed that such notice was given and in case there was any defect in the issuing of the notice or in its service the remedy of the appellant lay by means of an application to the court which passed the decree and could not afford any ground for that objection being raised subsequently or for its being entertained by the court to which the execution had been transferred. This view is fully supported by the decision of the Allahabad and Patna High Courts in *Taj Singh v. Jagan Lal* (1), *Dwarka Das v. Muhammad Ashfaq-Ullah* (2) and *Prithvi Chand Lal Chaudhri v. Satya Kinkar Das* (3).

We are therefore in agreement with the lower court that the present objection could not be entertained by the Civil Judge of Lucknow. We accordingly dismiss the appeal with costs.

Appeal dismissed.

(1) (1916) I.L.R., 38 All., 289.

(2) (1925) I.L.R., 47 All., 86.

(3) (1932) I.L.R., 11 Pat., 94.