

1892
 AGHORE
 NATH
 MUKHO-
 PADHYA
 v.
 GIRISH
 CHUNDER
 MUKHO-
 PADHYA.

referred to in the petition of the 6th June 1887, amongst which, no doubt, those of Assar 1287 were included. It would be giving too strict an interpretation to the terms of that petition to hold that thereby the parties to it other than the plaintiff adopted and ratified as their act the making of the notes. It lay on the plaintiff to show that this was the meaning and intention of the defendant Aghore Nath when he joined in that petition. By itself, it is too ambiguous to justify us in attributing that effect to it; it may have been a mere oversight that the amount then due for interest on the notes was included as part of the family debt.

But we think that, apart from this, the plaintiff had no authority to bind the defendants by the part payment of 1886 so as to prevent the notes from being barred, and so render a decree against him possible.

The result is that, except so far as the plaintiff did pay any of the money raised by him for family necessities, he has no cause of action; it is admitted that such payment (if made) was made so long ago that any claim founded upon it is long since barred by limitation. The suit therefore wholly fails, and the appeal must be allowed. We set aside the decree of the lower Appellate Court and dismiss the suit with costs in all the Courts.

Appeal decreed.

A. A. C.

Before Mr. Justice Prinsep and Mr. Justice Banerjee.

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 July 21.

THAKOOR DYAL SINGH AND OTHERS (JUDGMENT-DEBTORS) v. SARJU PERSHAD MISSEK AND ANOTHER (DEBTEE-HOLDERS).*

Execution of decree—Civil Procedure Code (Act XIV of 1882), s. 257(a)—Agreement sanctioned by Court executing decree—Enforcement of agreement in execution.

An agreement, which has received the sanction of the Court of execution under s. 257 (a) of the Civil Procedure Code, that money due under it.

* Appeal from order No. 284 of 1891, against the order of J. F. Stevens, Esq., District Judge of Tirhut, dated the 2nd of June 1891, affirming the order of Babu Grish Chunder Chowdhry, Subordinate Judge of that district, dated the 21st of March 1891.

should be realized as in execution of decree rather than by recourse to a separate suit, may be enforced in execution, the Court which would try the regular suit brought upon such an agreement being the same Court which would execute the decree to enforce its own terms.

Sadasiva Pillai v. Ramalinga Pillai (1) relied on.

THIS appeal arose out of an order for the execution of a decree dated the 2nd February 1878.

On the 14th November 1887 an agreement was made between the judgment-debtors (appellants) on the one hand and the decree-holders (respondents) on the other, by which the former agreed to pay interest at the rate of 12 per cent. per annum from the date of the decree instead of 6 per cent., the rate allowed by the decree, in consideration of the decree-holders giving the judgment-debtors six months' time to enable them to raise money in order to satisfy the amount of the judgment debt. The agreement was sanctioned by the Court on the 17th November, and, in accordance with it, the sale of the judgment-debtors' properties was postponed until the 15th December.

On the 11th April 1890 the decree-holders applied for execution. It was objected on behalf of the judgment-debtors that the decree-holders could not be allowed to recover the higher rate of interest in execution of the decree, and that if they wished to enforce the agreement they would have to bring a separate suit for that purpose.

The Subordinate Judge was of opinion that it was quite clear from the agreement that it was the intention of the parties that the higher rate of interest should be recovered in execution, and that the decree-holders were induced to grant time by the promise of the judgment-debtors to pay the higher rate of interest. Relying upon the Full Bench case of *Sita Ram v. Dasrath Das* (2), he disallowed the objection and ordered execution to issue.

On appeal the District Judge upheld this order.

The judgment-debtors appealed to the High Court.

Baboo *Digamber Chatterjee* for the appellants.

Mr. *C. Gregory* and Baboo *Abinash Okunder Banerjee* for the respondents.

(1) 15 B. L. R., 383; 24 W. R., 193.

(2) I. L. R., 5 All., 492.

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

We think that this case is concluded by the judgment of their Lordships of the Privy Council in *Sadasiva Pillai v. Ramalinga Pillai* (1). The agreement entered into between the parties is not on the record before us, but it has been found by the first Court, and this finding has not been questioned in any further proceedings taken in the case, that the parties intended by the agreement arrived at that the higher rate of interest should be recovered in execution of a decree, that is to say, in the present case that in consideration of abstaining from bringing the properties attached to sale, the judgment-debtors agreed to pay to the decree-holder interest at the rate of 12 per cent. per annum from the date of the decree, instead of 6 per cent., the rate allowed by the decree, and also the parties intended that the money recoverable under this agreement, that is to say, the sum due on calculation of the interest at the higher rate, should be recovered in execution of the decree. Their Lordships of the Privy Council in the case referred to held, on the authority of *Pisani v. The Attorney-General for Gibraltar* (2), that the parties should be held to the agreement that the questions between them should be heard and determined by proceedings quite contrary to the ordinary *cursus curiæ*; that is to say, applying this to the case before us, that the parties having come to an agreement which received the sanction of the Court of execution under section 257 (a), Civil Procedure Code, that the money due under that agreement should be realized as in execution of decree rather than by recourse to a separate suit, the execution court is competent to realize the money on the application of the judgment creditor in the manner agreed upon, the Court which would try the regular suit brought upon such an agreement being the same Court which would execute the decree to enforce its terms. The appeal must therefore be dismissed with costs.

Appeal dismissed.

C. D. P.

(1) 15 B. L. R., 383; 24 W. R., 193 (197).

(2) L. R., 5 P. C., 516.