REVISIONAL CIVIL.

Before Mullick and Kulwant Sahay, J.J.

RAI BAHADUR RAM SUMRAN PRASAD

v.

RAM BAHADUR.*

1922.

Dec. 22.

Execution of decree—amendment of application—Code of Civil Procedure, 1908 (Act V of 1908), Order XXI, rule 17—concurrent applications.

A court is competent at any time before execution proceedings terminate, and before the decree becomes barred by limitation, to allow a decree-holder whose application for execution of his decree is pending, to amend the application by the addition of other properties to the list of properties sought to be attached.

Ganendra Kumar Roy Chowdhury v. *Sri Sri Shyam Sunder*(1), followed.

Asgar Ali v. *Troilakya Nath Ghosh*(2), distinguished.

A court is competent to allow a decree-holder to prosecute two concurrent applications for execution of the same decree.

Saroda Prasad Mullick v. *Luchmeeput Singh Doogur*(3), *Krishto Kishore Dutt* v. *Roop Lall Dass*(4), *Baijnath Goenka* v. *F. H. Holloway*(5), *Maharaja of Bobbili* v. *Sri Raja Narsaraju*(6), *Radha Kishen Lal* v. *Radha Prashad Singh*(7) and *Sadho Saran* v. *Hawal Pande*(8), referred to.

The facts of the case material to this report were as follows :—

The petitioners obtained a decree for money against the opposite party in suit No. 858/80 of

*Civil Revision No. 239 of 1922 from an order of Mr. E. A. Khan, Subordinate Judge of Monghyr, dated the 11th July 1922.

(1) (1913) 27 Cal. L. J. 393. (3) (1871-72) 14 Moore, I. A. 529.

(2) (1890) I. L. R. 17 Cal. 651, F.B. (4) (1882) I. L. R. 8 Cal. 687.

(5) (1905) 1 Cal. L. J. 315.

(6) (1914) I. L. R. 37 Mad. 231; (1916) I. L. R. 39 M. 640; L. R. 43 I. A. 238.

(7) (1891) I. L. R. 13 Cal. 515. (8) (1897) I. L. R. 19 All. 98, F.B.

1913-15, in the Court of the Subordinate Judge of Monghyr, and on the 20th May, 1915, they made to that Court an application, No. 133 of 1918, for the execution of that decree. Some property belonging to the judgment-debtors was sold for a sum of Rs. 37,642, leaving a balance of Rs. 7,396-2-4 still due. While the execution case was still pending for the disposal of two applications for setting aside the sale which had not been confirmed, the decree-holder, on the 11th July, 1922, filed a petition before the executing Court stating that they had learnt that an amount of Rs. 6,309-10-0 realized upon a decree in favour of the judgment-debtor, was in deposit in the Court of the Subordinate Judge, and praying that this sum might be attached and paid to the decree-holders in satisfaction of their debt. On the 12th July, 1922, the Subordinate Judge made the following order :

"Heard the Vakil for the decree-holders. As the execution case in respect of the same decree is still pending before this Court, no fresh execution petition in respect of the same decree can be entertained. Rejected."

The present application for revision was made by the decree-holders against this order.

Susil Madhab Mullick and *Norendra Nath Sen*, for the petitioners.

S. K. Mitter (with him *Lachmi Kant Jha*), for the opposite party.

MULLICK, J.—(After stating the facts of the case as set out above, proceeded as follows) :—

It is urged by the opposite party that while execution case No. 133 of 1918 is pending no fresh execution proceeding can be instituted. In my opinion this is a wholly incorrect view of the law. Under the Civil Procedure Codes of 1859, 1877 and 1882, the legality of concurrent execution has always been recognized, though in practice it was not generally carried out. If authorities are required, reference may be made to *Saroda Prasad Mullick* v. *Luchmeeput*

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Singh Dooqur (1), *Krishto Kishore Dutt* v. *Roop Lall Dass* (2), *Baijnath Goenka* v. *F. H. Holloway* (3) and *Maharaja of Bobbili* v. *Sri Raja Narsaraju*(4), affirmed by the Privy Council in *Maharaja of Bobbili* v. *Narasaraju Peda Baliara Simhulu Bahadur* (5); indeed on principle there seems to be no difference between a concurrent execution after transfer in another Court and a concurrent execution in the Court in which the decree was passed. That the present Code does not view with disfavour concurrent executions is among other sections indicated by section 46, which is new and relates to precepts. That section enacts that upon the application of the decree-holder, the Court which passes the decree, may, whenever it thinks fit, issue a precept to any other Court which would be competent to execute such decree to attach any property belonging to the judgment-debtor and specified in the precept, provided that no attachment shall continue for more than two months unless the period of attachment is extended by an order of the Court: or unless before the determination of such attachment the decree has been transferred to the Court and the decree-holder has applied for an order for the sale of such property.

Further, it has been held by the Calcutta and the Allahabad High Courts that separate and successive applications for execution giving reliefs of different character may always be made [see *Radha Kishen Lal* v. *Radha Prashad Singh* (6) and *Sadho Saran* v. *Hawal Pande* (7)], and I see no reason why two applications for attachment of different properties cannot proceed simultaneously in execution of the same decree. In my opinion there is no provision of law which prevents the Court, in the present case, from entertaining a fresh application for the execution of the decree by attachment of money in deposit to the

(1) (1872) 14 M. I. A. 529.
(2) (1882) I. L. R. 8 Cal. 637.
(3) (1905) 1 Cal. L. J. 315.
(4) (1914) I. L. R. 37 Mad. 231
(5) (1916) I. L. R. 39 Mad. 640; L. R. 43 I. A. 238.
(6) (1891) I. L. R. 18 Cal. 515.
(7) (1897) I. L. R. 19 All. 98.

credit of the judgment-debtor in the same Court or in any other Court.

Order XXI, rule 11, of the present Act, which requires that the decree-holder shall state the result of all previous executions, is in my opinion, no bar to the maintenance of concurrent executions.

If, then, it is open to the decree-holder to file a fresh application, I see no reason why the Court cannot allow the amendment of the application, already filed, while the execution case is still pending, by the addition of other properties to the list of properties sought to be attached. It is contended that rule 17 of Order XXI contemplates that there can be no amendment after the execution case has been registered, but, in my opinion, there is no force in this contention and it has been so held in *Ganendra Kumar Roy Chowdhury* v. *Sri Sri Shyam Sunder* (1).

It is contended by the learned Counsel for the opposite party, that this last mentioned case was wrongly decided and that it conflicts with the Full Bench decision of the Calcutta High Court in *Asgar Ali* v. *Troilakya Nath Ghosh* (2). But this Full Bench case, in my opinion, has no application to the present case. There an application for execution was made which was not in proper form, and, when the prayer for amendment was made, the period of limitation for executing the decree had expired. The Court held that the amendment could not be made after the decree had become barred by limitation. But where the decree is still alive, I do not see why an application for amendment cannot be allowed, if the Court so chooses, at any time before the close of the execution proceedings. To hold otherwise would mean that, although the decree-holder has discovered property belonging to the judgment-debtor, which is within his grasp, and although he knows that the properties which he has

(1) (1918) 27 Cal. L. J. 398. (2) (1890) I. L. R. 17 Cal. 631.

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already attached will not satisfy his decree, he cannot have any relief till the disposal of the execution case, which may, as in the present instance, be protracted for a considerable time. The argument, that the object of the law is to prevent excess in realization, does not conclude the matter; the Courts will always endeavour to protect the judgment-debtor against unnecessary harassment.

Reference has been made to the English practice on the subject. It seems that a judgment-creditor in England may, in execution of a judgment for money or costs, issue any number of writs addressed to the Sheriffs of different counties or places in which the judgment-debtors' assets are and though he may also issue more than one writ in the same county but he cannot, in the latter case, if a seizure be made under one of the writs, ordinarily proceed with the other writs without obtaining a return of the first writ. Two or more writs of the same kind can be executed in different counties, but care must be taken that too much is not realized. These rules cannot, of course, affect the procedure in India, but they support the view that there is no objection in principle to the concurrent execution of a decree.

In the case before us the Subordinate Judge was wrong in holding that he had no jurisdiction to entertain the decree-holder's application of the 11th July, 1922. He had jurisdiction to accept it either as a fresh application for execution or as an application for amendment of the previous application, and he must now exercise the discretion with which the law vests him and dispose of the application according to law.

The application is, therefore, allowed with costs.

KULWANT SAHAY, J.—I agree.

Application allowed.