

## APPELLATE CIVIL.

1939.

*Before James and Rowland, JJ.*January, 27,  
30.

RANBAHADUR SINGH THAKUR

v.

AWADHBEHARI PRASAD SINGH.\*

*Execution—person appearing on the face of the decree as decree-holder or his transferee or successor, whether alone entitled to execute—plea as to decree-holder being benamidar, whether can be taken by judgment-debtor in execution proceeding—Code of Civil Procedure, 1908 (Act V of 1908), Order XXI, rule 2—entry of satisfaction, when can be claimed—payment must be to decree-holder or his agent.*

The person appearing on the face of the decree as the decree-holder is entitled to execute the decree, unless some other person can show that he has taken the decree-holder's place by an assignment of the decree or by operation of law, that is, by death or succession or in some similar manner.

In execution proceedings it is not open to the judgment-debtor to assert that the real holder of the decree is any person other than the person named as decree-holder in the decree unless there has been a valid assignment or devolution by process of law.

Under Order XXI, rule 2, Code of Civil Procedure, 1908, the judgment-debtor can only claim entry of satisfaction of the decree where payment has been made either to the decree-holder or to some other person definitely held out by the decree-holder as his agent for the purpose of payment.

*Jasoda Deye v. Kirtibash Das* (1) and *Palaniappa Chettiar v. Subramania Chettiar* (2), followed.

*Nil Kanta Ghosal v. Ram Charan Roy* (3), not followed.

*Per Rowland, J.*—An adjustment to which the decree-holder is not a party cannot be recognised by the executing court.

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\* Appeal from Appellate Order no. 225 of 1938, from an order of B. P. Jamar, Esq., District Judge of Monghyr, dated the 14th May, 1936, confirming an order of Babu Tekanath Jha, Subordinate Judge at Monghyr, dated the 21st February, 1938.

(1) (1891) I. L. R. 18 Cal. 639.

(2) (1924) I. L. R. 48 Mad. 553.

(3) (1928) 55 Cal. L. J. 82.

Appeal by the decree-holder.

The facts of the case material to this report are set out in the judgment of James, J.

*S. N. Bose* and *D. C. Varma*, for the appellant.

*S. K. Mitter*, for the respondents.

1939.

RANBAHADUR  
SINGH  
THAKUR  
v.  
AWADH-  
BEHARI  
PRASAD  
SINGH.

JAMES, J.—Ramsarup held a mortgage decree the dues under which including costs amounted to nearly twelve thousand rupees against Awadhbehari Prasad Singh. A maternal uncle of Ramsarup named Ramkhelawan held two money decrees against Awadhbehari, one in Begusarai and the other in Monghyr. Ramsarup and Awadhbehari agreed between themselves that the question of how Awadhbehari should settle these decrees should be referred to arbitration. This was apparently done on the assumption that Ramsarup was the real creditor in respect of the debts for which the money decrees had been obtained; but Ramkhelawan was not party to the reference to arbitration. The arbitrators decided that all the three decrees should be settled by the payment of Rs. 17,500 which meant practically that one of the decrees standing in the name of Ramkhelawan would be abandoned. This was to be effected by the conveyance of Awadhbehari's share in certain zamindari property to the value of Rs. 17,500. Certain property was conveyed to Ramsarup by a deed which stated the consideration to be Rs. 12,000 which was met by writing off the dues under the mortgage decree. After this conveyance had been executed, Ramkhelawan certified satisfaction of his decree at Begusarai. Awadhbehari applied under Order XXI, rule 2, that satisfaction should be recorded of Ramkhelawan's decree in Monghyr which after contest on the part of Rambahadur, Ramkhelawan's son, was allowed by the Subordinate Judge; and an appeal from that order was dismissed by the District Judge. That decree-holder has come in second appeal from that decision.

1939.

KANBAHADUR  
SINGH  
TEAKUR  
v.  
AWADH-  
BEHARI  
PRASAD  
SINGH.

JAMES, J.

Mr. S. N. Bose on behalf of the appellant argues that since he was no party to the agreement to refer his decrees to arbitration, he cannot be treated as bound by the proceedings of the arbitrators and by those of Ramsarup and the judgment-debtor between themselves. The conveyance recites that the property is transferred for consideration of Rs. 12,000 which is met by satisfaction of the mortgage decree. Mr. Bose argues that the provisions of section 92 of the Indian Evidence Act prohibit us from taking evidence of any oral agreement which would vary the terms set out in the document. I do not know that the second proviso to section 92 would not apply in this case. The parties would not be prevented from proving the existence of a separate oral agreement to the effect that the vendee would proceed no further in the prosecution of his claim for certain money debts not specified in the deed; and I do not consider that the judgment-debtor can be prevented from attempting to prove that there was such an agreement. Mr. Bose is apparently on stronger ground when he argues that the decree-holder must be held entitled to execute his decree unless it is proved that he has himself received payment or that some other person definitely held out by him as his agent for the satisfaction of the decree has received payment from the judgment-debtor. The courts below have come to the conclusion that Ramsarup was the real decree-holder and that Ramkhelawan was merely a benamidar. The judgment of the learned District Judge suggests that he bases his decision that Ramsarup was the real holder of the three decrees on the evidence of the arbitrators Ramcharitar Singh and Baleshwar Prasad. These men merely asserted that Ramsarup said that he was the decree-holder, a statement which would be inadmissible in evidence as proof of the fact that Ramsarup was the real owner. Awadhbehari said that Ramkhelawan was a farzidar; so he or his son Rambahadur took no step in the matter of the arbitration. Mr. Bose argues that even if

Ramkhelawan were a benamidar, it would be necessary before he could be prevented from executing his decree to show that he had either assigned the decree to somebody else or that he had been satisfied by some body whom he held out as his agent. Mr. Mitter on behalf of Awadhbehari relies on the decision in *Nil Kanta Ghosal v. Ram Charan Roy*<sup>(1)</sup> for his contention that the question of whether the person seeking execution is the true owner of the decree or not could be decided in execution proceedings under section 47 of the Code of Civil Procedure. This is contrary to the view which was taken in *Jasoda Deye v. Kirtibash Das*<sup>(2)</sup> and in earlier cases in the Calcutta High Court, wherein it was held that the person appearing on the face of the decree as the decree-holder is entitled to execution, unless some other person can show that he has taken the decree-holder's place by an assignment of the decree or by operation of law, that is, by death or succession or in some similar manner. In *Palaniappa Chettiar v. Subramania Chettiar*<sup>(3)</sup> it was held that where a decree had been transferred by an instrument in writing, no person other than the transferee named in the document could claim the benefit on the ground that the transferee was a mere benamidar. It must be held that in execution proceedings it is not open to the judgment-debtor to assert that the real holder of the decree is any person other than the person named as decree-holder in the decree unless there has been a valid assignment or devolution by process of law; and that under Order XXI, rule 2, he can only claim entry of satisfaction of the decree where payment has been made either to the decree-holder or to some other person definitely held out by the decree-holder as his agent for the purpose of payment. The decree-holder in the present case said that he accepted the arbitration to this extent that he accepted the decision that the dues under the three decrees—under the

1939.

KANBAHADUR  
SINGH  
THAKUR  
v.  
AWADH-  
BEHARI  
PRASAD  
SINGH.

JAMES, J.

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1939.

RAMBAHADUR

SINGH

THAKUR

v.

AWADH-

BEHARI

PRASAD

SINGH.

JAMES, J.

decree held by his uncle and the two held by him—should be limited to Rs. 17,500; but he did not admit that the arbitration was made at his instance or that he took any part in the reference; and there is no evidence to that effect on the record of these proceedings. The decree-holder did not accept the award so far as it decided that the conveyance of this property valued at Rs. 12,000 should be treated as a payment to him of his share of Rs. 17,500 represented by the two decrees. He had entered satisfaction for his decree at Begusarai and the learned District Judge inferred from this that he had been a party to the proceedings in arbitration; but the decree-holder said that he had done this on Ramsarup's telling him that Awadhbehari would pay up his decree which he held in Monghyr. There is no evidence to show that he authorised Ramsarup to treat satisfaction of the mortgage decree as satisfaction of his own decree in Monghyr or that he held out Ramsarup to the decree-holder as his agent with general powers for adjustment of his dues under the two decrees. I consider that in the circumstances it must be held that there was no evidence on which the courts below could hold that Rambahadur's decree in Monghyr had been satisfied, and that the petition of Awadhbehari under Order XXI, rule 2, ought to have been dismissed.

I would accordingly allow this appeal with costs, set aside the orders of the courts below and dismiss the petition of Awadhbehari Prasad Singh under Order XXI, rule 2. The appellant is entitled to his costs throughout.

ROWLAND, J.—I agree. An adjustment to which the decree-holder is not a party cannot be recognised by the executing court. The contrary position seems inconsistent with the provisions of the Code. Section 2, clause (3), defines "decree-holder" as the person in whose favour a decree has been passed or order capable of execution has been

made by a court and this must mean the person named in the decree. Then we have Order XXI, rule 1, directing that all money payable under a decree is to be paid either into the court or out of court to the decree-holder or otherwise as the court may direct. Then Order XXI, rule 2, refers to payment out of court or adjustment of the decree "to the satisfaction of the decree-holder" and does not recognise any payment or adjustment to the satisfaction of some third party. And rule 2, clause (3), lays down that a payment or adjustment which has not been certified or recorded as aforesaid shall not be recognised by any court executing the decree. The facts put in issue in this case were matters between the judgment-debtor and Ramsarup, a stranger to the suit, rather than between the judgment-debtor and the decree-holder named in the decree. The proper place for the disputes between the judgment-debtor and Ramsarup to be settled is not in the executing court but in separate and appropriate proceedings. I also agree with the reasoning of my learned brother and I concur in the order proposed to be passed.

S.A.K.

*Appeal allowed.***APPELLATE CIVIL.***Before James and Rowland, JJ.*

GORAKH SAHU

v.

SHEO NANDAN SINGH.\*

*Court-Fees Act, 1870 (Act VII of 1870), Schedule II, article 17(1)—Code of Civil Procedure, 1908 (Act V of 1908),*

\*Appeal from Appellate Decree no. 78 of 1936, from a decision of T. Luby, Esq., I.C.S., District Judge of Muzaffarpur, dated the 13th February, 1935, confirming a decision of Babu Kshetra Nath Singh, Subordinate Judge at Muzaffarpur, dated the 28th July, 1934.

1939.

KANBAHADUR  
SINGH  
THAKUR  
v.  
AWADH-  
BHARI  
PRASAD  
SINGH.

ROWLAND, J.

1939.

January, 30.