

APPELLATE CIVIL.

Before Sir Guy Ruddle, Kt., K.C., Chief Justice, and Mr. Justice Brown.

CO-OPERATIVE TOWN BANK OF PADIGON

1927

June 20.

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S.V.K.V. RAMAN CHETTYAR AND ONE.*

Civil Procedure Code (Act V of 1908), O. 21. rr. 16, 53—Rights of a transferee of a decree—Code regulates procedure, does not affect substantive rights—Decree realised by a judgment-creditor of decree-holder by execution before transferee takes action, effect of—Transferee's right against judgment-creditor.

The Civil Procedure Code regulates procedure, lays down the method by which substantive rights can be enforced, but does not ordinarily affect or confer such rights. A decree can be transferred by assignment in writing and the completion of such transfer, just as a transfer of any other kind of property, does not depend upon any recognition by the Court. Order 21, Rule 53 of the Code allows a judgment-creditor of a decree-holder to attach and realise the latter's decree, but it does not follow that he would be necessarily entitled personally to the beneficial interest of his execution if in fact at the time of his execution the attached decree had ceased to be the property of his judgment-debtor who had, prior to the attachment, validly transferred and assigned the decree to another person. The transferee could either apply in time for removal of attachment on the decree, or else, if the decree is realised, file a suit against the judgment-creditor to recover the money.

Sadagopa Chariar v. Raghunatha Chariar and others, 33 Mad. 62—followed. Puthiamdi Mammed v. Avalil Moidin, 20 Mad. 157—dissented from.

Co-operative Town Bank of Padigon v. S.V.K.V. Raman Chettyar and one, 4 Ran. 426—set aside.

Thein Maung—for Appellant.

Chari—for Respondents.

RUTLEDGE, C.J., AND BROWN, J.—The second respondent Maung Myo obtained a money decree against one Maung Po Hlaing. This decree was attached by the 1st respondent S.V.K.V. Raman Chettyar in execution of a decree against Maung Myo. After obtaining the attachment the Chettyar applied to the Court under

* Letters Patent Appeal No. 156 of 1926 arising out of Civil Second Appeal No. 589 of 1925—(1926) 4 Ran. 426.

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the provisions of Rule 53 of Order 21 of the Code of Civil Procedure and was allowed to execute the decree against Po Hlaing. A sum of Rs. 2,700 had been deposited in Court towards the satisfaction of the decree against Maung Po Hlaing and the respondent Chettyar withdrew this sum in execution of that decree. The plaintiff appellants, the Co-operative Town Bank of Padigon, claimed that prior to the attachment of the decree by the Chettyar Maung Myo had transferred the decree to them. They say that the Chettyar executed his decree and the decree against Maung Po Hlaing without their knowledge, the transfer having been made to them before the attachment. The Chettyar had no right in that decree, and they therefore claim to recover Rs. 2,700. The Chettyar did not admit the assignment to the Bank, and pleaded that in any case the plaintiffs were estopped from making this claim for this money now. These questions have not yet however been adjudicated upon. The suit was dismissed on the ground that, the respondent Chettyar having executed the decree in accordance with the provisions of the Code of Civil Procedure, the mere fact that the Bank had a previous assignment of the decree would not give them any right to follow the money in the hands of the Chettyar. The suit was dismissed by the trial Court and by the District Judge in appeal, and these decisions were affirmed on second appeal by a single Judge of this Court.*

The point raised is a difficult point of law, on which we have been unable to find any clear judicial pronouncement, and has, in our opinion, been quite rightly certified as a fit case for appeal under clause 13 of the Letters Patent. A number of cases have been cited in favour of the respondents to the effect that the only person entitled to execute a decree is

* See (1926) 4 Ran. 426.

the person who has followed the procedure laid down in Order 21 of the Code of Civil Procedure. We do not however think that these decisions necessarily conclude the matter. The Code of Civil Procedure, as the term implies, regulates procedure, and does not ordinarily affect substantive rights, and although the executing Court was bound to allow the Chettyar to execute his decree, it does not necessarily follow that the Chettyar was entitled to retain the benefit of that decree for his own purpose. The holder of a money decree acquires no right, title or interest in the property of his judgment-debtor merely by virtue of that decree, and he has no right to execute this decree against any property that is not the property of his judgment-debtor at the time of attachment. If then at the time of the attachment of the decree in this case the Chettyar's judgment-debtor had no longer any rights in the decree attached, the Chettyar could obtain no rights in that decree and could not utilize that decree for the purpose of satisfying his debt. Rule 16 of Order 21 provides for the application by the assignee of a decree to the Court to be allowed to execute the decree. The rule does not however say, and we know of no other provision of law to that effect, that the assignment has no legal force until the assignee is brought on the record under the provisions of Rule 16. It was held in the case of *Puthiamdi Mammed v. Avalil Moidin* (1), that all that the transferee of a decree gets in law for the money paid by him to the decree-holder for the transfer of his decree is an agreement to transfer it, not a complete transfer until recognised by the Court. If this decision is sound law, then we think this appeal is bound to fail. But this decision has been dissented from by another Bench of the same Court

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in the case of *Sadagopa Chariar v. Raghunatha Chariar and others* (1). The learned Judges who decided that case remarked in their judgment: "There is nothing in section 232, Civil Procedure Code, to suggest anything of the kind. On the other hand it can be gathered from the section itself that the completion of the transfer does not depend upon any recognition by the Court, for it begins by saying 'If a decree be transferred by assignment in writing,' thus assuming that there has been a complete transfer." With these remarks we agree. We see no reason why the transfer by a decree-holder of his rights in the decree should not operate on the date of transfer any more than in the case of the transfer of any other kind of property. The Code of Civil Procedure lays down the method by which the rights can be enforced, but does not itself confer the rights, and it seems to us that the transferee of a decree purporting to contract would put in an application under Rule 58 of Order 21 of the Code of Civil Procedure to remove an attachment of the decree made subsequently to this transfer whether he has himself taken steps to be entered on record in place of the original decree-holder or not.

It is suggested on behalf of the respondents that the rights of a transferee of a decree are set forth in Rule 16 of Order 21 and the rights of an attaching decree-holder in Rule 53, and that whichever party enforces his rights to his decree is entitled to the benefit of those rights. It has been pointed out that clause 3 of Rule 53 lays down that the holder of decree sought to be executed by the attachment of another decree of the nature specified in sub-rule (1) shall be deemed to be the representative of the holder of that decree, and that no such words occur in Rule 16 dealing with the transferee by assignment. It is clear that so far as

(1) (1909) 33 Mad. 62.

the executing Court is concerned the provisions of Rules 16 and 53 must followed. But we are unable to agree that it further follows that, when the attaching decree-holder has executed the decree, he is necessarily entitled personally to the beneficial interest of his execution if in fact at the time of the execution he had no legal right to execute it on his own account. In such circumstances it seems to us that he must be regarded as the trustee of the person beneficially entitled to the profit of the decree. In this view of the law the order dismissing the suit in the present case cannot be confirmed. The Chettyar raised in his written statement, amongst others, the defence that the appellants were estopped from claiming the money now. That may or may not be so, but that will depend on the facts of the present case which have not yet been tried.

We accordingly set aside the decrees of the lower Courts dismissing the suit, and direct that the suit of the plaintiff-appellants be readmitted and heard on its merits. The costs of this appeal and of the appeals before the District Judge and the single Judge of this Court will be borne by the respondents. The appellants will be entitled to a refund of the court-fees paid by them in the three appeals.

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