FULL BENCH.

Before Mr. Justice Chevis, Mr. Justice Abdul Raoof and Mr. Justice Abdul Qadir.

RAM LABHAYA (PLAINTIFF)—*Appellant*,

versus

MUKANDA MAL-KAPUR CHAND (DEFENDANT)—*Respondent*.

1922

March 23.

Civil Appeal No. 2120 of 1918.

Civil Procedure Code, Act V of 1908, section 47—Suit for a declaration that a decree has been fully satisfied and is incapable of execution—whether competent.

Held, by the Full Bench that a suit for a declaration that a decree has been fully satisfied and is incapable of execution is barred under section 47 of the Civil Procedure Code.

Diwan Singh v. *Amir Singh* (1), Mussammat *Jamna* v. *Beli Ram* (2), and *Jamun Ram* v. *Kishen Ram* (3), overruled.

Azizan v. *Matuk Lal Sahu* (4), *Deno Bhundu Nundy* v. *Hari Mati Dassee* (5), *Manjunatha Chetty* v. *Appaya* (6), *Jaikaran Bharti* v. *Raghunath Singh* (7), and *Karam Singh* v. *Amin Chand* (8), followed.

Nubo Kishen v. *Debnath Roy* (9), and *Nujeem Mullick* v. *Erfan Mullah* (10), dissented from.

The facts are given in the judgment of the Full Bench.

M. L. Puri for the appellant—The suit is not barred. I rely on *Diwan Singh* v. *Amir Singh* (1), *Jamun Ram* v. *Kishen Ram* (3), and Mussammat *Jamna* v. *Beli Ram* (2), for the contention that the suit is maintainable. There are also two earlier rulings of the Calcutta High Court, *viz.*, *Nubo Kishen* v. *Debnath Roy* (9), and *Nujeem Mullick* v. *Erfan Mullah* (10), which support my contention. The former says that the proper course is to prevent the injury being done at all and not to leave the plaintiff to be compensated by damages which might not be an adequate compensation to him.

(1) 16 P. R. 1910.
(2) 190 P. W. R. 1913.
(3) 79 P. W. R. 1914.
(4) (1893) I. L. R. 21 Cal. 437 (F. B.)
(5) (1903) I. L. R. 31 Cal. 480 (F. B.)
(6) (1916) 36 Indian Cases 988.
(7) (1898) I. L. R. 20 All. 254.
(8) 47 P. R. 1881.
(9) (1874) 22 W. R. 194.
(10) (1874) 22 W. R. 298.

1922

RAM LABHAYA
v.
MUKANDA MAL-KAPUR CHAND.

In *Diwan Singh* v. *Amir Singh* (1), at page 47, the learned Judges say: "we cannot see that it is just or equitable to compel the judgment-debtor to wait until perhaps his goods have been seized and sold, leaving him to sue afterwards when the obvious course is for him to sue at once to prevent such injury." If the present suit is held not to lie the judgment-debtor will have no remedy.

Fakir Chand for the respondent—The present suit clearly falls within the purview of section 47, Civil Procedure Code, which prohibits the decision of questions relating to the satisfaction of the decree by any Court other than the Court executing the decree. The executing Court in the present case has held that the decree is not satisfied. That decision is final and no separate suit like the present lies. Their Lordships of the Privy Council held in *Prosunno Kumar* v. *Kali Das* (2), "that no narrow construction should be placed upon the language of section 244 of the Code of 1882" corresponding to section 47 of the present Code. That judgment was followed by the Calcutta High Court in *Azizan* v. *Matuk Lal Sahu* (3). The two later judgments of the Chief Court relied upon by counsel for the appellant simply follow *Diwan Singh* v. *Amir Singh* (1). The following rulings also support my contention *Deno Bhundu Nundy* v. *Hari Mati Dassee* (4), *Majunatha Chetty* v. *Appaya* (5) (a Madras ruling), *Jaikaran Bharti* v. *Raghunath Singh* (6), and *Hormasji Dorabji* v. *Burjorji Jamsetji* (7), and so do the provisions of Order 21, rules 1, 2 and 3 of the Civil Procedure Code.

The remedy of the judgment-debtor lies in a suit for damages after payment of the decretal amount, see *In the Matter of Medai Kaliani Anni* (8) and *Krishna Aiyar* v. *Savurimuthu Pillai* (9). Mulla in his Civil Procedure Code (7th Edition) has discussed the matter fully at pages 543-545.

M. L. Puri, replied.

(1) 16 P. R. 1910.
(2) (1892) I. L. R. 19 Cal 683 (P. C.).
(3) (1893) I. L. R. 21 Cal. 437 (F. B).
(4) (1903) I. L. R. 31 Cal. 480.
(5) (1916) 36 Indian Cases 988.
(6) (1898) I. L. R. 20 All. 254.
(7) (1886) I. L. R. 10 Bom. 155.
(8) (1907) I. L. R. 30 Mad. 545.
(9) (1918) I. L. R. 42 Mad. 338.

1922

RAM LABHAYA
v.
MUKANDA MAL-KAPUR CHAND.

Second appeal from the decree of Misra *Jwala Sahai, District Judge, Shahpur, at Sargodha, dated the 28th January* 1918, *affirming that of* Khan *Saadullah Khan, Senior Subordinate Judge, Sargodha, dated the 9th August* 1917, *dismissing plaintiff's suit.*

The judgment of the Court was delivered by—

ABDUL RAOOF J.—This was a suit for a declaration to the effect that the decree, dated the 13th November 1905, passed in favour of the firm called Mukanda Mal-Kapur Chand of Kalka against the plaintiff and Ram Narain, defendant, had been satisfied and was not executable. The plaintiff's case was that the defendant No. 1 held a decree of the Simla Court against the plaintiff and the defendant No. 2 for Rs. 19,562; that the plaintiff and the defendant No. 2 had paid the amount of the decree in full, but that the decree-holders had allowed payment of Rs. 17,961 only and taken out execution for Rs. 4,781 in the Court of the Subordinate Judge at Sargodha, and that on the 25th January 1916 the Subordinate Judge holding that Rs. 2,009 had been paid off had disallowed Rs. 1,600. Thus the plaintiff owed nothing to the decree-holder and has, therefore, prayed for a declaration that the above-mentioned decree had been satisfied and was incapable of being executed. The defendant No. 1 denied the payment and pleaded that the suit was not maintainable and that in any case the suit, as framed, did not lie. The plea more clearly put was as follows, namely, that the suit was barred by the provisions of section 47, Civil Procedure Code, and that in any case as no consequential relief was claimed it could not be maintained with reference to the provisions of section 42 of the Specific Relief Act. The trial Court with reference to the decisions in *Jaikaran Bharti* v *Raghunath Singh* (1), *Deno Bhundu Nundy* v. *Hari Mati Dassee* (2), and *Azizan* v. *Matuk Lal Sahu* (3), was inclined to take the view that the suit was barred by section 47, but it felt bound to follow the decision of the Punjab Chief Court in *Diwan Singh* v. *Amir Singh* (4), and held that the suit was not barred under the said section. With regard to the

(1) (1893) I.L.R. 20 All. 254.
(2) (1903) I.L.R. 31 Cal. 480.
(3) (1893) I.L.R. 21 Cal. 487 (F. B.)
(4) 16 P. R. 1910.

1922

RAM LABHAYA v. MUKANDA MAL-KAPUR CHAND.

second part of the plea the trial Court, however, came to the conclusion that the plaintiff was bound to sue for a consequential relief and without claiming a relief to that effect his suit was not entertainable according to the provisions of section 42 of the Specific Relief Act. Taking this view of the case the trial Court returned the plaint to the plaintiff to enable him to amend the plaint and re-present it after the necessary amendment. The plaintiff having declined to carry out the order of the Court the suit was thrown out as being opposed to the rule contained in section 42 of the Specific Relief Act.

The plaintiff preferred an appeal against the decree of the trial Court dismissing the suit, and the Appellate Court relying on *Diwan Singh* v. *Amir Singh* (1), held that he could only protect himself from execution proceedings being taken against him by the decree-holder by a prayer for injunction as consequential relief and dismissed the appeal.

The plaintiff preferred a second appeal to this Court. It came up for decision before a Division Bench which disagreed with the two Courts below as to the view taken by them with regard to the applicability of section 42 of the Specific Relief Act, but the learned Judges constituting the Bench were of opinion that the suit was barred by section 47, Civil Procedure Code. This view, however, being contrary to the view taken by a Division Bench of the Chief Court in *Diwan Singh* v. *Amir Singh* (1), they referred the whole case to a Full Bench stating the question to be decided by the Full Bench in the following terms :—

"The question is whether a suit for a declaration that a decree has been fully satisfied and is incapable of execution is barred under section 47 of the Civil Procedure Code."

Clause (1) of section 47 provides that—

"All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit."

(1) 16 P. R. 1910.

Now, it cannot be denied that the question involved in the present suit has arisen between the parties to the suit in which the decree was passed and relates to the execution, discharge or satisfaction of the decree. In fact the very terms of the relief are to the effect that the decree has been satisfied and is not executable. It has been held in numerous cases to which it is not necessary to refer that the section should receive a liberal construction. This has been further emphasized by the introduction of the word 'all' in the present Code. Where the decree itself is not impugned in any way and is validly susceptible of execution, all questions relating to the execution, discharge or satisfaction of the decree, according to the policy underlying the provisions contained in section 47, must be determined by the Court executing the decree and not by a separate suit. According to rule (1) of Order XXI, all money payable under a decree shall be paid as follows, namely, (*a*) into the Court whose duty it is to execute the decree, or (*b*) out of Court to the decree-holder; or (*c*) otherwise as the Court, which made the decree, directs. Sub-clause (*b*) of the above rule suggested the contingency of a decree being satisfied out of Court and the legislature in order to preserve the jurisdiction of the Court executing the decree enacted clause (1) of rule 2, Order XXI, in order to meet the contingency. This clause provides that—

"Where any money payable under a decree of any kind is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, *and the Court shall report the same accordingly.*"

The policy of the legislature is abundantly made clear by this clause, namely, that even in respect of payment or adjustment out of Court the Court executing the decree alone will have a right to decide. This policy is further emphasized by enacting clause (3) of rule 2 of Order XXI, which provides that

"A payment or adjustment which has *not* been certified *or recorded* as aforesaid, shall not be recognized by any Court *executing the decree.*"

Consistently, therefore, with the policy underlying the provisions of section 47 we must hold that

1922

RAM LABHAYA v. MUKANDA MAL-KAPUR CHAND.

the question of the adjustment of a decree out of Court lies exclusively within the purview of the rule contained in that section. We are aware that the learned Judges of the Division Bench, who decided the case reported as *Diwan Singh* v. *Amir Singh* (1) held that as section 258 of the old Code specifically enacted that an uncertified adjustment could not be recognized as an adjustment of the decree by *any Court executing the decree*, it was implied that it might be recognized as such by a Court trying the matter as a regular suit. We are not prepared to agree in this interpretation. This interpretation was not accepted by the majority of the Full Bench of the Calcutta High Court in *Azizan* v. *Matuk Lal Sahu* (2). In our opinion the opinion of the majority was correct. In a later case in *Deno Bhundu Nundy* v. *Hari Mati Dassee* (3), Macleau, Chief Justice, and Justices Hill and Stevens accepted the view of the majority in *Azizan* v. *Matuk Lal Sahu* (2). This ruling was not brought to the notice of the learned Judges of the Chief Court who decided the case of *Diwan Singh* v. *Amir Singh* (1.)

Mr. Mukand Lal Puri has relied upon two other cases decided by the Punjab Chief Court in support of his argument. They are reported as Mussammat *Jamna* v. *Beli Ram* (4) and *Jamun Ram* v. *Kishen Ram* (5). The decisions in both these cases, however, were based upon the rule laid down in the earlier case referred to above, and we are not prepared to accept any of these decisions as laying down the correct law. The learned counsel has also relied upon two earlier decisions of the Calcutta High Court reported as *Nubo Kishen* v. *Debnath Roy* (6) and *Nujeem Mullick* v. *Erfan Mullah* (7). Both these decisions were considered in the case of *Azizan* v. *Matuk Lal Sahu* (2) and it was pointed out by Mr. Justice Macpherson that in those decisions the prohibition contained in section 11 of Act XXIII of 1861 against separate suits was ignored. We cannot, therefore, regard those cases as laying down good law. Mr. Fakir Chand has called our attention to an old case decided by the Chief Court reported as *Karam Singh* v. *Amir*

(1) 16 P.R. 1910.
(2) (1893) I.L.R. 21 Cal. 437 (F.B.).
(3) (1903) I.L.R. 31 Cal. 480 (F. B.).
(4) 190 P.W.R. 1913.
(5) 79 P.W.R. 1914.
(6) (1874) 22 W.R. 194.
(7) (1874) 22 W.R. 298.

1922

RAM LABHAYA
v.
MUKANDA MAL-
KAPUR CHAND.

Chand (1) which appears to have laid down a rule contrary to the one expounded in *Diwan Singh* v. *Amir Singh* (2). The judgment is somewhat meagre, but the principle of section 47, Civil Procedure Code, is clearly deducible from it.

In the case of *Manjunatha Chetty* v. *Appaya* alias *Manuel Souza* (3), almost all the cases on the subject were reviewed and the learned Judges who decided the case held that—

"Section 47, Civil Procedure Code, is a statutory prohibition against matters relating to the execution of a decree being agitated by a separate suit. A suit, therefore, for a declaration that a decree was satisfied and for an injunction restraining the defendant from executing his decree against the plaintiff is barred by section 47 (1), Civil Procedure Code."

The same rule is laid down in the case of *Jaikaran Bharti* v. *Raghunath Singh* (4). It has repeatedly been held that one of the objects of the legislature in enacting section 47 was to avoid multiplicity of suits. If we were to accept the contention put forward on behalf of the plaintiff we should be giving effect to a rule which would defeat the policy of the legislature.

We accordingly dissent from the view taken in *Diwan Singh* v. *Amir Singh* (2), and accepting the view of the Calcutta, Madras and Allahabad High Courts, hold that a suit for a declaration that a decree has been fully satisfied and is incapable of execution is barred under section 47, Civil Procedure Code.

We dismiss the appeal with costs.

A. N. C.

Appeal dismissed.

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(1) 47 P.R. 1881.
(2) 16 P.R. 1910.
(3) (1916) 36 Indian Cases 988.
(4) (1898) I.L.R. 20 All. 254.