

LETTERS PATENT APPEAL.

Before Sir Arthur Page, Kt., Chief Justice, and Mr. Justice Das.

1933

May 29.

C.S. ARMUGAN CHETTIAR

7.

SITARAM. *

Execution—Civil Procedure Code (Act V of 1908), Order 21, rules 2, 53—Attachment of decree under rule 53—Plea of satisfaction of decree attached—Satisfaction not certified under rule 2—Creditor's right to execute decree.

Where a creditor has attached the decree of his judgment-debtor under the provisions of Order 21, rule 53 of the Civil Procedure Code the person bound by the attached decree cannot resist the attachment on the ground that prior to such attachment the decree had been satisfied by payment or an adjustment unless such payment or adjustment has been duly certified or recorded under Order 21, rule 2 of the Code.

Sanyal for the appellant. An uncertified payment or adjustment of a decretal amount cannot be recognized by an executing Court. Where a creditor attaches a decree in favour of his judgment-debtor under Order 21, rule 53 of the Civil Procedure Code it is no defence to the execution of that decree by the creditor that the decree has been satisfied unless the payment has been certified under Order 21, Rule 2.

Aiyangar for the respondent. If a judgment-debtor pays money towards a decree with the knowledge that it is under attachment by a creditor of the decree-holder he cannot claim any protection. See Order 21, rule 53 (6); and *Gopal Nanashet v. Joharimel* (1). But where it is paid *bonâ fide* and without knowledge of the attachment the judgment-debtor can raise it as a defence if execution of the decree is applied for by the decree-holder, and

* Letters Patent Appeal No. 1 of 1933 arising out of Civil Second Appeal No. 48 of 1932 of this Court at Mandalay.

(1) I.L.R. 16 Bom. 522.

à fortiori by the attaching creditor. See *Lakshminarasimham v. Lakshminarasimham* (1).

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PAGE, G.J.—This appeal must be allowed.

On the 25th of April, 1931, one Bindraban obtained a decree for Rs. 282-1-0 against the respondent Sitaram. On the 22nd of August, 1931, the appellant, who had been granted a decree against Bindraban for more than Rs. 600, applied in execution to attach Bindraban's decree against Sitaram in execution of his decree against Bindraban. On the 5th of September 1931 a prohibitory notice was issued to the Court in which Bindraban had obtained his decree against the respondent Sitaram by way of attachment of that decree under Order 21, rule 53 (6), of the Civil Procedure Code.

Now, it was alleged by the respondent that on the 1st of June, 1931, the decree that Bindraban had obtained against him had been fully satisfied by a payment to Bindraban of a sum of Rs. 250. That payment or adjustment has not been certified or recorded as certified under Order 21, rule 2.

The question that arises in this case is whether the appellant is entitled to execute the decree in favour of Bindraban against the respondent notwithstanding the alleged payment or adjustment of that decree.

Now, what rights had the appellant under Order 21, rule 53 of the Civil Procedure Code? Under rule 53 (1), (3), it is provided that "the holder of a 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 the attached decree and to be entitled to execute such attached decree in any

(1) I.L.R. 50 Mad. 677.

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manner lawful for the holder thereof." The right of the appellant, therefore, to execute Bindraban's decree against the respondent was no more and no less than the right in that behalf of Bindraban himself. In the circumstances of the present case could Bindraban have executed the decree that he had obtained against the respondent? I am clearly of opinion that he could, because the alleged payment or adjustment, even if proved, has not been certified or recorded, and under Order 21, rule 2 (3), "a payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognized by any Court executing the decree". It follows, therefore, that inasmuch as Bindraban could execute the decree that he had obtained against the respondent, the appellant also could execute that decree against the respondent. It is, however, contended that the alleged payment or adjustment, was effected on the 1st of June, 1931, and before the attachment of the decree, and that such payment or adjustment, if proved, would afford a valid ground in law for resisting the attachment of the decree by the appellant. This contention, however, can only be sustained upon the footing that Order 21, rule 53 (1), (6), applies as well to an uncertified and unrecorded payment or adjustment as to a payment or adjustment that has been certified and recorded under Order 21, rule 2. I can discover no reason for validating an uncertified payment or adjustment under Rule 53 (1), (6), and in my opinion there is no justification for so doing having regard to the genesis of this sub-rule. Prior to the insertion of sub-rule (6) in Order 21, rule 53, Civil Procedure Code, it had been held that after a prohibitory notice by way of attachment of a decree had been received by the

Court in which the decree had been passed the Court had no jurisdiction to record a certified payment or adjustment of the attached decree duly made within the period prescribed in that behalf, even although the judgment-debtor who had made the payment and effected the adjustment was wholly unaware that the decree had already been attached. *Gopal v. Joharimal* (1). It was provided, therefore, under Order 21, rule 53 (1), (6), *inter alia* that "no payment or adjustment of the attached decree made by the judgment-debtor in contravention of such order with knowledge thereof, either through the Court or otherwise, shall be recognized by any Court so long as the attachment remains in force". Such being the object and effect of Rule 53 (1), (6), there would be no ground or justification for holding that the Court, merely because a decree has been attached, will recognize a payment or adjustment of that decree which had not been duly certified or recorded under Order 21, rule 2, of the Civil Procedure Code.

For these reasons the appeal is allowed, the decree passed by Mosely J. is set aside, and the decree of the District Court restored. The appellant is entitled to his costs in all the Courts.

DAS, J.—I agree.

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(1) (1891) I.L.R. 16 Bom. 522.