

APPELLATE CIVIL.

Before Mr. Justice Campbell and Mr. Justice Addison.

GURDIAL SINGH Appellant

versus

GURBAKHSI SINGH AND OTHERS Respondents.

Civil Appeal No. 1213 of 1925.

Civil Procedure Code, Act V of 1908, Order XXI, rule 16—Application for execution by transferee of decree—Allegation of benami transaction.

Held, that where a decree has been transferred to a particular person under an instrument in writing, no other person claiming that he is the real owner under the transfer and that the transferee named therein is a mere *benamidar* for him, can apply for execution of the decree under the terms of Order XXI, rule 16 of the Civil Procedure Code.

Palaniappa Chettiar v. Subramania Chettiar (1) followed.

Miscellaneous first appeal from the order of Lala Suraj Narain, Senior Subordinate Judge, Lahore, dated the 3rd February 1925, rejecting the application.

TEK CHAND, JAGAN NATH, AGGARWAL and
DHARAM DAS, for Appellant.

BADRI DAS, D. C. RALLI and DAULAT RAM, for
Respondents.

The judgment of the Court was delivered by—

CAMPBELL J.—On the 26th February 1915 Daulat Ram obtained a decree against Guranditta Mal. On the 18th February 1919, Daulat Ram died leaving a son Gurbakhsh Singh by a pre-deceased wife and a widow named *Mussammat Raj Kumari*. A posthumous son was born later named Rajindar Kumar and he is now dead. On the 9th September

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1919 Gurbakhsh Singh representing himself to be the only heir of his deceased father Daulat Ram executed a registered deed in favour of Ram Singh Kabli assigning to him that portion of the decree which remained unsatisfied, for Rs. 80,000. On the 25th January 1921 Gurbakhsh Singh filed an application for execution of the decree making no mention of the assignee. The application remained pending, and on the 4th February 1924 Gurdial Singh presented an application under Order XXI, rule 16 alleging that the assignment in favour of Ram Singh by Gurbakhsh Singh was *benami* and that he was the real transferee, and prayed that his name should be substituted as decree-holder in place of that of Gurbakhsh Singh.

Objections were raised to this latter application and eventually it was rejected by order of the Court, dated the 3rd February 1925. Gurdial Singh has presented the present appeal.

It is doubtful whether the application of Gurdial Singh fulfilled the requirements of Order XXI, rule 16 as an application for execution of the decree, but, assuming that it did so, it was nevertheless incompetent since there was no transfer by assignment in writing in favour of Gurdial Singh. It has been ruled recently by the Madras High Court in *Palaniappa Chettiar v. Subramania Chettiar* (1) that, where a decree has been transferred to a particular person under an instrument in writing, no other person claiming that he was the real owner under the transfer and that the transferee named therein was a mere *benamidar* for him can apply for execution of the decree under the terms of Order XXI,

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rule 16, Code of Civil Procedure. We agree with this interpretation of the rule and it seems to us that the Legislature has deliberately provided that in an execution Court only that person claiming to be an assignee of a decree shall be recognised who is able to produce a written instrument of assignment in his favour, and that there shall be no facilities for prolonging execution proceedings by investigations into complicated disputes between a decree-holder and an alleged assignee or between rival assignees. It would often happen that the judgment-debtor is not concerned at all with the merits of such a dispute, but only with its duration.

We dismiss the appeal with costs.

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Appeal dismissed.

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