

APPELLATE CIVIL.

Before Mr. Justice Dunkley.

MA HLA YON AND ANOTHER

v.

MAUNG TUN YIN AND ANOTHER.*

1938

Mar. 11.

Execution—Money-decree—Legal representative of deceased judgment-debtor—Legal representative not the debtor—Transfer of decree to legal representative of judgment-debtor—Execution against other judgment-debtors by transferee—Civil Procedure Code, O. 21 r. 16, Proviso.

The legal representative of a deceased judgment-debtor does not become a judgment-debtor, and especially he is not a judgment-debtor against whom a decree for the payment of money has been passed. Such a legal representative is not a person against whom there is a decree for the payment of money within the meaning of the second proviso to rule 16 of Order 21 of the Civil Procedure Code, and he as transferee of the decree is entitled to execute the decree against the other judgment-debtors.

Asia Bibi v. Malik, I.L.R. 54 All. 448; *Panachand v. Sundrabai*, I.L.R. 31 Bom. 308, referred to.

Banarsi Das v. Maharani Kuer, I.L.R. 5 All. 27; *P. R. M. Abdul Kadir Sahib v. Marakkayar*, 51 Mad. L.J. 443, distinguished.

P. K. Basu (with him *G. R. Rajagopaul*) for the appellants. The first respondent is the assignee of the decree passed against the appellant and three others. He is the husband of the heir of one of the judgment-debtors, and under Buddhist law she acquires an interest in the decree. Consequently the respondent stands in the position of the legal representative of a deceased co-judgment-debtor and is also interested in the decree as a decree-holder. The decree therefore, cannot be executed against the appellant by reason of the 2nd proviso to O. 21, r. 16. See *P. R. M. Muhammad Abdul Kadir v. Syed Abdul Kadir* (1). A joint decree cannot be executed by one of several joint-debtors against a co-judgment-debtor, and the decree

* Civil Second Appeal No. 281 of 1937 from the judgment of the District Court of Hanthawaddy in Civil Misc. Appeal No. 4 of 1937.

(1) 51 M.L.J. 443.

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in this case is extinguished at least in respect of the wife's share. See *Banarsi Das v. Maharani Kuer* (1). The legal representative is a judgment-debtor in the sense that he has to satisfy the debt out of the property which comes into his hands. See ss. 50, 52 and 53 of the Civil Procedure Code. The provisions of O. 21, r. 16 are salutary, and the remedy of the respondent is a suit for contribution where all questions of liability can be gone into in detail.

Hay for the respondent. The decision in *P. R. M. Muhammad's* case is distinguishable because it was wrongly admitted in that case that the legal representative of the judgment-debtor is a judgment-debtor himself. There is no decree for the payment of money, that is a personal decree, against him, and this is sufficient to take the case out of O. 21, r. 16. See *Panachand v. Sundarabai* (2); *Asia Bibi v. Malik Aziz Ahmad* (3); *Lalla Bhagun v. Holloway* (4). *Banarsi Das's* case is also distinguishable because that was a case of inheritance.

Basu in reply. What was admitted in the Madras case was that there was a decree for the payment of money and no more. The decision in *Asia Bibi's* case is really the converse of this case.

DUNKLEY, J.—This second appeal arises out of somewhat complicated facts. The A.R.S.A. Chettyar Firm obtained a decree, in suit No. 45 of 1933 of the Subdivisional Court of Twante, on a promissory note against four persons, Maung Shwe Wa and his wife Ma Hla Yon, and Maung Shwe Yaung and his wife Ma Ywet. All these persons are now dead, except Ma Hla Yon who is the first appellant. Ma Nyi Ma Gyi,

(1) I.L.R. 5 All. 27.

(2) I.L.R. 31 Bom. 308.

(3) I.L.R. 54 All. 448.

(4) I.L.R. 11 Cal. 393.

the second appellant, is a daughter of Maung Shwe Wa and Ma Hla Yon. Maung Nyo, the second respondent, is a son of Ma Hla Yon. He has taken no active part in the proceedings. Maung Tun Yin, the first respondent, is the husband of Ma Kyin May, who is the adopted daughter of Ma Ywet. The original decree against these four persons was a decree for the payment of money by these four persons jointly and severally. On the 5th May, 1934, Ma Ywet made a gift of 300 acres of land to her daughter, Ma Kyin May. Subsequently Ma Kyin May and her husband, Maung Tun Yin, mortgaged part of these gifted lands to the A.R.S.A. firm for a sum of Rs. 1,500 and then for this sum, *plus* a further sum of Rs. 1,700, the decree obtained in suit No. 45 of 1933 was transferred by the A.R.S.A. firm to Maung Tun Yin alone. Maung Tun Yin was substituted as the decree-holder in place of the A.R.S.A. firm, under the provisions of Order 21, rule 16, of the Code of Civil Procedure, and proceeded to execute the decree against the two appellants and the second respondent. Objection has been taken by the appellants to this application for execution, and, so far as this second appeal is concerned, reliance is placed solely on the second proviso to rule 16 of Order 21. This is in the following terms :

" Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others."

It is urged on behalf of the appellants that, although the transfer of the decree was taken in the name of Maung Tun Yin only, Ma Kyin May also became interested in this decree by reason of the transfer (her interest in the decree as joint transferee remaining to be ascertained), and, relying on the judgment in *Banarsi Das and others v. Maharami Kuer and*

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another (1), it is urged that, to the extent of Ma Kyin May's interest in the decree, it cannot be executed by reason of the second proviso to rule 16. It is admitted on behalf of the first respondent that Ma Kyin May is to a certain extent interested in the decree, although the transfer was taken in the name of her husband alone; but it is contended that the second proviso to rule 16 has no application in this case.

The argument on behalf of the appellants is that Ma Kyin May is also a judgment-debtor, because she is the daughter and heir of the deceased judgment-debtor, Ma Ywet, and therefore became a judgment-debtor as the legal representative of Ma Ywet. The authority for the proposition that, when a person is the legal representative of a deceased judgment-debtor and at the same time is interested in the decree as decree-holder, that person is unable to execute the decree is the case of *P. R. M. Muhammad Abdul Kadir Sahib Marakkayar v. Syed Abdul Kadir Marakkayar* (2). But, to my mind, this case can be distinguished because, as it appears from the judgment (at page 446), it was admitted in argument that the legal representative of a judgment-debtor is in effect the judgment-debtor himself. This admission was, in my opinion, wrongly made, and is contrary to law, so far as the second proviso to rule 16 is concerned, because this proviso is concerned solely with a decree for the payment of money against two or more persons, and there can be no decree for the payment of money against the legal representative of a deceased judgment-debtor.

The liability of such a legal representative is enacted in the provisions of section 50 of the Code of Civil Procedure, and all that this section states is that where a judgment-debtor dies before the decree has been fully

(1) (1882) I.L.R. 5 All. 27.

(2) 51. Mad. L.J. 443.

satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased, and, further, such a legal representative is liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of. The legal representative, therefore, does not become a judgment-debtor and certainly not a judgment-debtor against whom a decree for the payment of money has been passed. This is the view which has been taken by the Bombay High Court in the case of *Panachand Pomaji Marwadi v. Sundrabai kom Thakurji Marwadi* (1) and the Allahabad High Court in the case of *Asia Bibi v. Malik Aziz Ahmad* (2), with which decisions I respectfully agree.

In my opinion, Ma Kyin May is not a person against whom there is a decree for the payment of money, within the meaning of the second proviso to rule 16 of Order 21 of the Code of Civil Procedure, and, consequently, I hold that, as the transferees of the decree, Maung Tun Yin and Ma Kyin May are entitled to execute the decree against the appellants.

This appeal therefore fails and is dismissed with costs, advocate's fee three gold mohurs.

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(1) (1907) I.L.R. 31 Bom. 308. (2) (1931) I.L.R. 54 All. 448.