LETTERS PATENT APPEAL.

Before Sir Ernest H. Goodman Roberts, Kt., Chief Justice, and Mr. Justice Dunkley.

1939
Nov. 20.

JAGADISH MISHRA *v.* SAW EU HOKE.*

Execution—Decree transferred for execution—Application by judgment-debtor for entering up satisfaction—Jurisdiction of transferee Court to entertain application—Civil Procedure Code, O. 21, rr. 1 & 2.

When a decree has been transferred for execution and execution has been taken out in the transferee Court, the judgment-debtor can make an application to that Court for the certification of a satisfaction of the decree and such transferee Court has jurisdiction to record such satisfaction.

In O. 21, r. 1 of the Civil Procedure Code a clear distinction is made between the Court which passed the decree and the Court whose duty it is to execute the decree ; rule 1 (*a*) refers to the Court whose duty it is to execute the decree, and rule 1 (*c*) refers to the Court which made the decree, and these two clauses give different jurisdictions to the executing Court and to the Court which made the decree.

In construing the expression "the Court" in rule 2 (2) reference must be made to r. 2 (1), and this sub-rule (1) says that the Court is the Court whose duty it is to execute the decree.

Rauf for the appellant.

Darwood for the respondent.

In Civil Second Appeal No. 374 of 1938 of this Court the point for decision was whether a Court to which a decree was transferred for execution had jurisdiction to decide and record on the application of the judgment-debtor that the decree had been satisfied.

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BAGULEY, J.—The point that arises in this case is exceedingly simple, but so far as I am aware there is no authorized report dealing with it, and only in one case among the unauthorized reports has a similar state of affairs been dealt with.

The appellant got a decree executable against the respondent in the Court of Small Causes, Rangoon, it was also executable against others. To execute it against the respondent, who lives

* Letters Patent Appeal No. 8 of 1939 from the judgment of this Court in Civil 2nd Appeal No. 374 of 1938 from the judgment of the District Court of Amherst in Civil Appeal No 38 of 1938.

in Moulmein, on January 10th, 1938, he applied to the Court for transfer of the decree to the Subdivisional Court of Moulmein. On January 17th a copy of the decree with the usual certificate of non-satisfaction was sent to the Moulmein Subdivisional Court, and on January 27th an application was made for execution.

On February 2nd, 1938, the respondent filed what he calls a written statement alleging that the decree, so far as he was concerned, had been settled with the appellant on December 15th 1937. This application was accepted by the learned Subdivisional Judge, and in the end he held, as a matter of fact, that the decree had been adjusted so far as respondent was concerned. The appellant appealed against this order to the District Judge and the appeal was dismissed. He now files a second appeal to this Court, and the only ground which has been argued is that the Subdivisional Judge had no jurisdiction to deal with the matter at all.

If the Subdivisional Judge has jurisdiction he was entitled to go into the question in the way in which he did, *vide Maung Tin* v. *Ma Mi* (1). The application to certify adjustment was made within 90 days of the date on which it was alleged the adjustment had been reached. The decision of the Lower Appellate Court cannot be questioned with regard to the facts, so I have only got to decide whether the Subdivisional Judge had authority to deal with the question of adjustment or whether he should have referred the respondent to the Small Cause Court, Rangoon, being the Court which passed the decree.

Certification of adjustment out of Court is governed by Order 21 Rule 2, and under that rule the adjustment must be certified "by the Court whose duty it is to execute the decree." The difficulty arises from the fact that on the date of the alleged adjustment, namely December 15th 1937, the only Court which had power to execute the decree was the Small Cause Court, Rangoon, whereas, on the date on which the application was made for recording the adjustment, the Subdivisional Court of Moulmein was under a duty to execute the decree because a copy of the decree had been sent to it by the Small Cause Court, Rangoon. Execution proceedings had been started and under section 42 of the Code of Civil Procedure the Subdivisional Court of Moulmein had the same powers of executing the decree as if it had passed it itself. At first sight, I must say that I was strongly of

(1) (1927) I.L.R. 5 Ran. 833.

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the opinion that the Small Cause Court, Rangoon, was the only Court which had jurisdiction to deal with this matter. The adjustment having taken place or being alleged to have taken place on December 15th would take effect from that date. From that date, the decree had been fully satisfied so far as the respondent was concerned, and for the Subdivisional Court to hold that the decree had been satisfied as from December 15th looked to me like being equivalent to questioning the certificate of non-satisfaction dated January 17th which the Small Cause Court, Rangoon, had sent to it. It is settled law that the Subdivisional Court, Moulmein, could not have questioned the decree sent to it, *vide S.A. Nathan* v. *S.R. Samson* (1), and it seems to me that the certificate of non-satisfaction must be regarded as clothed with the same sanctity. If the adjustment were alleged to have taken place after January 17th it seems to be clearly one which should be investigated by the Subdivisional Court because if it found that the decree had been adjusted as from that date, such finding would in no way run counter to the certificate of non-satisfaction.

On referring, however, to the certificate of non-satisfaction, I note that it in no way states that the decree is still executable in full. The actual wording is "Certified that no satisfaction of the decree of this Court in Civil Regular Suit No. 1955 of 1936, a copy of which is hereunto attached, has been obtained *by execution* within the jurisdiction of this Court." It will be seen, therefore, that all that is certified is that there has been no satisfaction by execution within the jurisdiction of the Small Cause Court ; so for the Subdivisional Court to find that the decree was adjusted as from December 15th in no way runs counter to the certificate of non-satisfaction. Turning again to Order 21 Rule 2, this requires that the application to record satisfaction must be made to the Court "whose duty it is to execute it", and giving the words their ordinary meaning that must mean "whose duty it is at the time the application was made to execute the decree." At the time the application was made it was the duty of the Subdivisional Court to execute the decree, and, therefore, in my opinion, that was the Court which had power to deal with the question of whether an adjustment had or had not been made. *Prima facie* it had the power to deal with it, and this power could be exercised without in any way questioning the decree or the certificate of non-satisfaction sent to it by the Small Cause Court.

(1) (1931) I.L.R. 9 Ran. 480.

This is enough to dispose of the case. The appeal is dismissed with costs : advocate's fee three gold mohurs.

On the application of the appellant the learned Judge granted leave for a Letters Patent Appeal.

DUNKLEY, J.—The short point of law arising in this Letters Patent Appeal is whether, when a decree has been transferred for execution and execution has been taken out in the transferee Court, the judgment-debtor may make an application to that Court for the certification of a satisfaction of the decree and whether such transferee Court has jurisdiction to record such satisfaction.

As my learned brother Baguley has pointed out in the judgment from which he gave a certificate for the present appeal, there is nothing in the certificate of non-satisfaction, which is sent by the Court which passed the decree to the Court to which the decree is transferred for execution, to prevent the latter Court from making the necessary inquiry upon the judgment-debtor's petition and recording satisfaction of the decree, if it finds as a fact that the decree has been satisfied, because the certificate of non-satisfaction is to the effect that no satisfaction has been obtained by execution within the jurisdiction of the Court which passed the decree and is not a certificate that satisfaction has not been obtained in any other way.

The provisions of rule 2 of Order XXI of the Civil Procedure Code, which is the rule under which satisfaction has to be recorded, appear to be perfectly plain on this point. In this Order a clear distinction is made between the Court which passed the decree and the Court whose duty it is to execute the decree, for rule 1, clause (*a*), refers to the Court whose duty it is to execute the decree, and rule 1, clause (*c*), refers to the Court which made the decree, and these two clauses of

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this rule give different jurisdictions to the executing Court and to the Court which made the decree. Under sub-rule (2) of rule 2, it is directed that the judgment-debtor may also inform the Court of a payment or adjustment and apply to the Court to issue a notice to the decree-holder to show cause why the satisfaction or adjustment should not be recorded, and that the Court may, after such inquiry as is necessary, record the satisfaction or adjustment of the decree if it finds that the same has been made. In construing the expression "the Court", as used in this sub-rule, obviously reference must be made to sub-rule (1) of the same rule, and sub-rule (1) says that the Court is the Court whose duty it is to execute the decree.

Dr. Rauf, for the appellant, has argued that this expression must mean "the Court whose duty it was to execute the decree at the time when the satisfaction was made", but this is not the plain and natural meaning of this expression, because if and when the judgment-debtor makes an application under sub-rule (2) the Court whose duty it is to execute the decree is the Court whose duty it is to execute the decree at the time when the application is made. Therefore it is, in my opinion, open to the judgment-debtor to make an application to that Court, which is the transferee Court. The transferee Court also has jurisdiction to record the satisfaction, if it finds after due inquiry that the satisfaction has been made.

Therefore this appeal fails and is dismissed with costs, advocate's fees three gold mohurs.

ROBERTS, C.J.—I agree.