

APPELLATE CIVIL.

Before Mr. Justice Nánábhái Haridás and Sir William Wedderburn, Bart.,
Justice.

1888.
August 6

MULCHAND RANCHHODDA'S, APPLICANT, v. CHHAGAN NA'AN,
OPPONENT. *

Decree, assignment of—Execution by assignee—Impeachment of the decree by a legal representative—Power of Court to review its order of sanction for transfer—Mofussal Small Cause Court Act XI of 1865, Sec. 21—Civil Procedure Code (Act XIV of 1882), Sec. 623.

On 4th June, 1879, one Ambáram obtained a Small Cause Court decree against Báí Dhiraj, the widow of the opponent's separated brother, and on the 17th November, 1881, assigned it to the applicant. Immediately after the assignment the applicant applied to the Court for execution, which was ordered under section 232 of the Civil Procedure Code (Act XIV of 1882)—neither Ambáram nor Báí Dhiraj having appeared to object to it, though notice of the applicant's application was given to them. The applicant, accordingly, on 6th February, 1882, recovered Rs. 10 from Báí Dhiraj in execution. Shortly afterwards, Báí Dhiraj died, and the applicant applied for further execution of the decree against the opponent as her legal representative. The opponent admitted that he was her heir, but objected to the execution, on two grounds, viz.: (1), that the decree had already been satisfied, and (2) that the transfer of the decree was fraudulent and collusive. The lower Court rejected the application for execution, holding, as to the alleged satisfaction, that it could not be recognised, as it was made out of Court; but, as to the second objection, that though the sale was duly effected, there was fraud and collusion in the assignment of the decree. The applicant thereupon applied to the High Court.

Held, that the applicant was entitled to execution. As to the first objection, the decision of the lower Court was right. As to the second objection, there was no evidence of fraud or collusion; and the Court having found that the sale was duly effected, the applicant had the same right to execute the decree as the transferor Ambáram had. If the judgment-debtor had been alive, she could not have resisted the execution, and, as her legal representative, the opponent did not stand in any better position. The Court was bound to execute its own decree, it being unreversed and in full force.

THIS was an application under the extraordinary jurisdiction of the High Court against an order of Khán Bahádur C. M. Cursetji, Judge of the Court of Small Causes at Ahmedabad.

On the 4th June, 1879, one Ambáram obtained in the Small Cause Court at Ahmedabad a consent decree against Báí Dhiraj,

* Extraordinary Application, No. 59 of 1885.

the widow of the opponent's separated brother. On the 17th November, 1881, Ambárám assigned the decree for Rs. 251 to the applicant, Mulchand, who, immediately after the assignment, applied for execution. Under section 232 of the Civil Procedure Code (Act XIV of 1882) notices were served on Ambárám and Bái Dhiraj, and no objection having been made by either of them, execution was allowed to proceed. On 6th February, 1882, the applicant recovered Rs. 10 from Bái Dhiraj. Shortly afterwards Bái Dhiraj died, and Mulchand presented an application for further execution of the decree against her estate, to which the opponent, Chhagan, had succeeded as her heir. A notice having been served on Chhagan to show cause why the decree should not be executed, he appeared, and objected on the grounds (1), that the decree had been already satisfied, and (2) that the assignment to the applicant was fraudulent and collusive. He prayed that it might be set aside.

The Judge of the Small Cause Court held, as to the first objection, that no satisfaction effected out of Court could be recognised; and, as to the second objection, he held that though Ambárám had sold the decree to the applicant, the assignment was fraudulent and collusive, and he rejected the application.

Against this order the applicant applied to the High Court under its extraordinary jurisdiction.

A *rule nisi* was granted.

The rule now came on for hearing.

Pándurang Babibhadra showed cause.—The High Court can not exercise its extraordinary jurisdiction here, as the lower Court has refused the petitioner's application on the ground of fraud and collusion. The defence of fraud can always be pleaded—*Rungráv Rájji v. Sidhi Mahomed Ebráhém*⁽¹⁾.

Motilál M. Munshi, contra.—The applicant having purchased the decree obtained by Ambárám, the lower Court was wrong in refusing the petitioner's application for further execution. The duty of the Court executing a decree is of a ministerial

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character, and the Court cannot go behind it so long as the decree remains unreversed—*Rámphal Rái v. Rám Barun Rái*⁽¹⁾. Neither Bái Dhiraj, the judgment-debtor, nor Ambárám made any objection when notice was served on them under section 232 of the Civil Procedure Code (Act XIV of 1882). Bái Dhiraj paid the transferee Rs. 10 in part satisfaction of the decree. If Bái Dhiraj were alive, she could not resist further execution, much less can the opponent, who is admittedly her legal representative—*Shálagráam v. Hanmantrám Jamnádas*⁽²⁾. The only objections that a legal representative can raise are—(a) that he is not a legal representative; (b) that he has no assets of the deceased; and (c) that the decree is satisfied; but he cannot allege that the decree was fraudulent or collusive. The alleged satisfaction was made out of Court, and whether it was for consideration, or otherwise, the Court cannot take notice of it under section 258, Civil Procedure Code. If both the parties to a suit have been guilty of fraud, a decree is binding on them and their representatives—*Ahmedbhoy v. Vulleebhoy*⁽³⁾.

NANÁBHÁI HARIDÁS, J.—We think the rule in this case must be made absolute, with costs.

The consent-decree of the Small Cause Court, obtained by Ambárám against Bái Dhiraj on the 4th June, 1879, still stands unreversed and in full force. It was transferred by Ambárám to Mulchand, the petitioner, by assignment in writing, on the 17th November, 1881. On the 19th November, 1881, the transferee applied to the Court for execution, which was ordered under section 232, Civil Procedure Code, neither the transferor, Ambárám, nor the judgment-debtor, Bái Dhiraj, having appeared to object to it, although notice of such application was given to both of them under that section. The transferee, accordingly, recovered from Bái Dhiraj Rs. 10 on the 6th February, 1882.

Thereafter Bái Dhiraj died, and the transferee of the decree has now applied for further execution of it against the opponent, Chhagan, as her legal representative. Chhagan does not deny that he is such representative, or that he has assets of Bái Dhiraj

(1) I. L. R., 5 All., 53.

(2) Printed Judgments for 1882, p. 149.

(3) I. L. R., 6 Bom., 70

in his possession. He admits in his evidence that he is her heir, and that he has sued for debts due to her. His objection to the execution is twofold—(1st), that the decree has already been satisfied, which implies an admission of the decree being a good and binding decree *inter partes*; and, (2nd), that the transfer is fraudulent, and that, therefore, the transferee is not entitled to apply for execution.

As to the first of these objections, it is a good answer to the application, if it can be proved; but it is alleged that Ambárám was paid out of Court, and we think the Court below was right in not recognising such payment, assuming it to have been made, the same not having been certified to it either by the decree-holder, Ambárám, or by the judgment-debtor, Bái Dhiraj, as required by section 258, Civil Procedure Code. As to the second objection, we see no evidence of any fraud in the sale or transfer of the decree, and the Court below finds that “the sale was duly effected by Ambárám Dalpat.” If so, the petitioner has the same right to execute the decree that his transferor, Ambárám, himself had.

It is clear, under the circumstances mentioned above, that Bái Dhiraj, the original judgment-debtor, if alive, could not have resisted Ambárám’s application for execution, and, as her legal representative, Chhagan stands in no better position. It is equally clear that the transferee of the decree has acquired all the rights of his transferor, Ambárám, including the right to apply for execution of it. It is immaterial whether the petitioner can now prove payment of consideration to Ambárám or not. The Court’s order, sanctioning or recognising the transfer made after due notice to Ambárám, is binding upon him. He has never complained of it, and to Bái Dhiraj’s legal representative it can make no difference whether the decree against Bái Dhiraj is executed by Ambárám or by his assignee. Besides, such order is equally binding upon Bái Dhiraj and her representatives—*Sháligráh v. Hanmantrám Jamnádás*⁽¹⁾. The Court is bound to execute its own decree, it being unreversed and in full force; and it has no jurisdiction to review its order sanctioning or

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recognising the transfer of that decree by Ambárám to the petitioner, no application having ever been made to it for that purpose by any one entitled to make it—see section 21, Act XI of 1865, and section 623, Civil Procedure Code. We, accordingly, reverse its order of the 31st January, 1885, refusing execution which the petitioner complains of, and direct it to proceed to execute such decree.

Rule made absolute.

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Sir W. Wedderburn, Bart., Justice.

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August 11.

GOVINDA BA'BA'JI, (ORIGINAL PLAINTIFF), APPLICANT, v. NA'IKU JOTI,
(ORIGINAL DEFENDANT), OPPONENT.*

*Mámlatdár's Act (Bombay) III of 1876, Sec. 15, Cl. (c), suit under—Jurisdiction
—Mámlatdár's power to try subsequent suit in respect of the same subject-matter
—Practice—Parties.*

The applicant had been dispossessed of certain land, in execution of a decree obtained by the opponent in the Court of the Mámlatdár of Karád, under clause (c) of section 15 of the Mámlatdár's Act, III of 1876, to which he (the applicant) was not a party. The applicant thereupon brought the present suit against the opponent to recover possession. The Mámlatdár, relying on a Government circular, dismissed the suit as *res judicata*. The applicant applied to the High Court under its extraordinary jurisdiction.

Held, that the decree made by the Mámlatdár, in the former suit, under clause (c) of section 15 of the Mámlatdár's Courts Act III of 1876, was no bar to the exercise by him of jurisdiction in the present suit, the present plaintiff (applicant) not having been a party to the former proceedings, and that it was irregular for the Mámlatdár to refer to a Resolution of Government for the purpose of determining the effect to be given to his former decree.

The order of the Mámlatdár was reversed, and the case directed to be heard. *Nána Bayáji v. Pándurang Vásudev*(1) referred to and distinguished.

THIS was an application under the extraordinary jurisdiction of the High Court, against the order of Ráv Sáheb Bákrishna Náráyan Váidya, Mámlatdár of Karád, in the Sátára District.

The opponent, claiming to be entitled to unobstructed possession of the land in dispute, had obtained a decree to that effect in a suit in the Mámlatdár's Court at Karád, in the Sátára

* Application, No. 9 of 1885, under Extraordinary Jurisdiction.

(1) I. L. R., 9 Bom., 97.