

would have been used. The same interpretation on the section has been put by the Division Bench of this Court<sup>(1)</sup>. In the present case the consent, though it was obtained subsequently to the filing of the plaint, did not, in our view of the section, vitiate the proceedings. We must, therefore, confirm the decree with costs.

(1) Appeal No. 68 of 1884 decided on 4th May, 1887.

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## APPELLATE CIVIL.

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*Before Mr. Justice Nánábhái Haridás and Mr. Justice Jardine.*

VISHNU VISHWANATH, (PLAINTIFF), v. HUR PATEL AND  
OTHERS, (DEFENDANTS).\*

1888.  
*February 9.*

*Civil Procedure Code (Act XIV of 1882), Sec. 257A—Decree—Havála or undertaking by a third party to pay decreed debt for the judgment-debtor—Agreement incorporating the havála, in substitution of the decree, capable of execution at the date of the agreement—Suit on such agreement.*

The plaintiff obtained a money decree against the defendant Hur Patel, and in execution thereof attached his property. Thereupon, at Hur Patel's request, five persons gave a *havála* or oral undertaking to pay the amount of the decree, and the attachment was removed. It appeared that some payment was made under the *havála*. Subsequently Hur Patel and the defendants Nos. 2 and 3 executed a bond to the plaintiff reciting the *havála*, the payment thereunder, and agreeing to pay the amount of the decree with interest. Neither the *havála* nor the bond was brought to the notice of the Court for sanction, and the decree, which was capable of execution, was then destroyed. The plaintiff now sued to recover the debt due under the bond. The District Judge was of opinion that the part of the bond which contained a promise to pay interest was void, but that in respect of the principal amount of the decree it was not void. On reference to the High Court,

*Held*, that the whole bond was void. The *havála* was an agreement such as is contemplated in paragraph 1 of section 257A of the Civil Procedure Code (Act XIV of 1882), and was void for want of sanction of the Court under that section. The bond, regarded as one in consideration of the *havála* or as an agreement for satisfaction of the decree, was also void under paragraph 2 of the same section for a similar reason.

THIS was a reference by H. Batty, District Judge of Thána, under section 617 of the Civil Procedure Code (Act XIV) of 1882.

\* Civil Reference, No. 45 of 1887.

1888.

VISHNU  
VISHWANÁTH  
v.  
HUR PATEL.

The plaintiff obtained a money decree against the defendant Hur Patel, and, in execution thereof, attached his property. Thereupon, at Hur Patel's request, five persons gave a *havála* or oral undertaking to pay the amount of the decree, and the attachment was removed. It appeared that some payment was made under the *havála*. Subsequently Hur Patel and the defendants Nos. 2 and 3 executed a bond to the plaintiff reciting the *havála*, and the payment thereunder, and agreeing to pay the amount of the decree with interest. Neither the *havála* nor the bond was brought to the notice of the Court for sanction, and the decree, which was capable of execution, was then destroyed. The plaintiff now sued to recover the debt due under the bond. The District Judge was of opinion that the part of the bond which contained a promise to pay interest was void, but that in respect of the principal amount of the decree it was not void.

The points submitted by the District Judge for the High Court's decision were :—

1. Is an agreement void under section 257A if entered into by a judgment-debtor and others with a decree-holder to pay the amount of an *havála* given in settlement of a decree with interest not awarded by the decree, if at the time of such agreement in substitution of the *havála* the decree was still enforceable and was not certified as satisfied ?

2. If the agreement to pay interest in excess of the decree be void, is the agreement valid and enforceable as far as regards the amount due under the decree ?

On the first point the District Judge was of opinion that the agreement was void under section 257A so far as regards the interest not due under the decree ; on the second, that the agreement is not void in respect of the principal due under the decree.

*Vásudev Gopál Bhandárkar* for the plaintiff :—The first defendant was not a party to the *havála*, though it was given at his request by others. The defendant was a party to the bond, and if the bond is void as against him it is not so as against the other defendants. The bond is not entirely void. The agreement for payment of interest can be separated from the other part, and

the other defendants are liable to pay the principal amount of the decree: see *Davlatsing v. Pándu*<sup>(1)</sup>. The provisions of section 257A (Act XIV of 1882) applying only to parties to the decree, and here the other defendants not being parties are liable to pay: see *Yellá Chetti v. Munisámi*<sup>(2)</sup>.

*Shivráam Vithal Bhandárkar* for the defendants:—The whole bond is void, as the two parts cannot be separated. *Davlatsing v. Pándu*<sup>(1)</sup> is on all fours with the present case. If the *havála* is void, for want of Court's sanction under section 257A of the Civil Procedure Code, the bond, which was based on it, is also void.

NÁNÁBHÁI HARIDÁS, J.:—The *havála* mentioned by the District Judge was an agreement such as is contemplated in paragraph 1, section 257A, Civil Procedure Code, and, as such, void on account of want of sanction by the Court which had passed the decree.

If the bond sued upon be regarded as one in consideration of the *havála*, there was no consideration for it; the *havála* itself was void for the reason above mentioned.

If it be regarded as an agreement for the satisfaction of the decree, it comes under paragraph 2, Section 257A of the Code, and is void for want of the Court's sanction.

For these reasons, we consider the whole bond to be void.

(1) I. L. R., 9 Bom., 176.

(2) I. L. R., 6 Mad., 101.

## APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and  
Mr. Justice Nánábhái Haridás.

JUGALDAS, (ORIGINAL DEFENDANT), APPELLANT, v. AMBA'SHANKAR  
AND ANOTHER, (ORIGINAL PLAINTIFFS), RESPONDENTS.\*

1888.

March 1.

*Landlord and tenant—Sale by landlord of land held by tenant—Fraud in such sale—  
Suit by purchaser against tenant—Plea by tenant impeaching sale by his landlord  
—Limitation.*

The defendant was tenant of the lands in dispute under a lease dated 22nd June, 1875. In 1878 his landlord sold the lands to the plaintiffs by registered deed, but in 1879 complained to the Mámlatdár that he had been cheated by the plaintiffs, who, he alleged, had not paid the purchase-money. This allegation the plaintiffs denied.

\* Second Appeal, No. 748 of 1885.