APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

TRIMBAK RAMKRISHNA RANADE (ORIGINAL PLAINTIFF), APPELLANT, v. HARI LAXMAN RANADE AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.* 1910. *July* 1.

Civil Procedure Code (Act XIV of 1882), *sec.* 258—*Adjustment or payment of decree—Adjustment not certified to the Court—Decree-holder acting upon the adjustment and receiving money—Application to execute the decree—Estoppel by conduct—Indian Evidence Act (I of* 1872), *sec.* 115.

A decree was adjusted outside the Court. No notice was given to the Court of the adjustment; and its sanction was not taken under section 258 of the Civil Procedure Code of 1882. The decree-holder received payments under the adjustment and after some time applied to execute the decree irrespective of the adjustment. The judgment-debtor pleaded the adjustment as a bar to execution. The decree-holder contended that the adjustment not having been certified to the Court, it could not recognise it as valid but was bound to execute the decree. The Subordinate Judge overruled the contention holding that as the decree-holder had, after the adjustment, received for several years moneys under it, he was estopped by conduct under section 115 of the Indian Evidence Act, 1872.

Held, that the view of the Subordinate Judge gave the go-by to the plain language of the last paragraph of section 258 of the Civil Procedure Code, 1882.

There is no room left by the law for the operation of the law of estoppel in the matter of execution. The last paragraph of section 258 enacts a special law for a special purpose whereas section 115 of the Indian Evidence Act, 1872, relates to the general law of estoppel; and the principle is that a special law overrides for its purposes the general law.

Per CHANDAVARKAR, J.—Fraudulent executions of decrees must be discouraged by the Courts whenever they come to their notice; and decree-holders, who enter freely into adjustments outside the Court and do not certify them as required by law, but fraudulently apply for execution, ignoring the adjustment, should be dealt with under the criminal law.

Per HEATON, J.—The purpose of section 258 of the Civil Procedure Code, 1882, is that the Court shall have complete knowledge of all that is done towards the satisfaction of its decree.

*F. A. No. 215 of 1908.

1910.

TRIMBAK RAMKRISHNA v. HARI LAXMAN.

APPEAL from the decision of M. V. Kathawate, First Class Subordinate Judge of Ahmednagar.

Proceedings in execution.

The decree, of which the execution was sought, was passed in 1893 and was confirmed in appeal in 1895. It directed partition of property between the plaintiff and the defendants, who were members of a joint Hindu family. The plaintiff was, under the decree, awarded annually a 1/13th share of the income of the family property. It was also directed that the parties should pay in equal shares the debts due by the family to outsiders.

In 1899, the parties entered into an arrangement, whereby the plaintiff relinquished his share in the family property to the defendants, and the defendants undertook to pay plaintiff's share in the family debts and also to pay to the plaintiff Rs. 125 every year for his maintenance, and Rs. 100 to his daughter. After the arrangement, the plaintiff continued to receive payments from the defendants. The Court was not informed of the arrangement, nor was its sanction obtained under section 258 of the Civil Procedure Code, 1882.

The plaintiff applied to execute the decree. The defendants contended that the arrangement which was acted upon by the plaintiff barred the execution. The plaintiff replied that the deed evidencing the arrangement was taken from him under coercion and undue influence; but he led no evidence to prove his allegation.

The Subordinate Judge found that the plaintiff had acted under the arrangement and was receiving thereunder payments from the defendants, who had also to liquidate a portion of the plaintiff's share in the family debts. He rejected the application for execution on the following grounds :—

"It seems to me that the plaintiff is estopped by his conduct from repudiating it. And he cannot now execute the decree. Section 258 prevents the executing Court from recognising payments or adjustments not certified to it and not sanctioned by it. It does not affect the law of estoppel as laid down by section 115 of the Evidence Act."

The plaintiff appealed to the High Court.

G. K. Dandekar for the appellant:—A decree-holder has to certify adjustment of a decree to the Court; but if he fails to do so, it is equally open to the judgment-debtor to move the Court. If, notwithstanding this, the judgment-debtor continues making payments which are not certified to the Court, the decree-holder is not thereby estopped from executing the decree. Section 115 of the Indian Evidence Act does not apply here; it is, at the most, a rule of evidence and nothing more.

S. K. Sane and *S. K. Godbole* for the respondents:—The plaintiff has in the execution proceedings admitted to have received certain payments from the defendants. These payments should, in any event, be credited in defendants' favour. See *Gopal Das* v. *Ganga Ram*.[1]

CHANDAVARKAR, J.:—The *darkhast*, in respect of which this appeal is preferred, was presented for the execution of a decree for partition dated the 4th of July 1893. By that decree the appellant was awarded annually a 1/13th share of the income of the property belonging to him and his co-parceners, and it was also declared that they should pay in equal shares the debts due from them, as members of a joint Hindu family, to outsiders.

By the present *darkhast* the appellant sought, in execution of the decree, for his share of the income due for 13 years immediately preceding the *darkhast*. He also asked the Court to determine his share of the debts and to deduct it from his share of the income awardable under the *darkhast*.

The application for execution was opposed by the respondents on the ground that the appellant had in November 1899 by a deed relinquished his annual share of the income awarded to him by the decree, in consideration of receiving from the respondent Vishnu, Rs. 125 a year as maintenance.

The appellant admitted execution of the deed but pleaded that he had executed it under coercion. He led no evidence, however, in the lower Court to substantiate that defence. The Subordinate Judge held coercion not proved.

(1) (1888) All. W. N. 115.

1910.

TRIMBAK RAMKRISHNA v. HARI LAXMAN.

But it was contended before him by the appellant that, as the arrangement under the deed was pleaded as an adjustment and satisfaction of the decree outside the Court, and had not been certified to it as required by section 258 of the Code of Civil Procedure (Act XIV of 1882), the Court could not recognise it as valid but was bound to execute the decree.

The Subordinate Judge overruled the contention, holding that, as the appellant had, after executing the deed, received for several years moneys under it, he was estopped by conduct under section 115 of the Indian Evidence Act.

This view of the Subordinate Judge gives the go-by to the plain language of the last paragraph of section 258 of Act XIV of 1882, which was in force at the time of this *darkhast*. It says that a Court which is asked to execute a decree for money shall not recognise for the purposes of execution any adjustment of it, whole or partial, or any payment, made outside the Court and not certified to it as required in the preceding part of the section. When the law directs that such adjustment or payment "shall not be recognised" for the purposes of execution, it means that the adjustment or payment, as the case may be, should be treated as an invalid or void transaction, so far as the executing Court is concerned. There is no room left by the law for the operation of the law of estoppel in the matter of execution. The last paragraph of section 258 of Act XIV of 1882 enacts a special law for a special purpose, whereas section 115 of the Indian Evidence Act relates to the general law of estoppel; and the principle is that a special law overrides for its purposes the general law. As held by the Privy Council in *Gokul Mandar* v. *Pudmanund Singh*[1], "the essence of a Code is to be exhaustive on the matters in respect of which it declares the law, and it is not the province of a Judge to disregard or go outside the letter of the enactment according to its true construction."

The Subordinate Judge has disallowed the *darkhast* also on the ground that the appellant is not entitled to seek execution in respect of his share of the income before paying his share of

(1) (1902) L. R. 29 I. A., 196 at p. 202.

the debts due to creditors by both the appellant and the respondents as co-parceners in a joint Hindu family. But the decree does not make the payment by the appellant of his share of the debts a condition precedent to his right to receive his share of the income. The decree merely declares by way of an independent provision that the debts shall be paid equally by the co-parceners.

This is conceded by the respondents' pleader before us.

Upon these grounds the order in execution appealed from must be reversed and the *darkhast* remitted to the lower Court for fresh hearing and disposal.

In dealing with the *darkhast* it will be competent for the Subordinate Judge to consider whether, apart from the appellant's right to execute the decree in spite of his deed, his conduct in seeking execution has been fraudulent so as to render him liable to a criminal prosecution. Fraudulent executions of decrees must be discouraged by the Courts whenever they come to their notice; and decree-holders, who enter freely into adjustments outside the Court and do not certify them as required by law, but fraudulently apply for execution, ignoring the adjustment, should be dealt with under the Criminal Law.

It will also be competent for the Subordinate Judge, in dealing with the *darkhast*, to consider whether under section 258 of Act XIV of 1882, the respondents' plea of adjustment outside the Court, put in as a defence to the *darkhast*, can be treated as notice, to the Court, of the adjustment, satisfying the provisions of the section regarding certification, so as to warrant the Court in holding that the decree, having been wholly satisfied, according to law, is no longer capable of execution. On this point I express no opinion.

Costs of the *darkhast* hitherto incurred in the lower Court and here to abide the result.

HEATON, J.:—I think that this is a matter which is substantially disposed of on a preliminary point, and wrongly disposed of, and therefore it must be remanded to the lower Court to be disposed of on its merits.

1910.

TRIMBAK RAMKRISHNA v. HARI LAXMAN.

Curiously enough, I say curiously, because after hearing what this matter is about, it so strikes me; no one concerned appears to doubt that we are dealing with a thing which is an adjustment of a decree. It seems to me that the question arises at the very outset whether this is an adjustment of a decree at all; or whether it is a transfer of a right acquired under a decree, which is quite a different thing. If it is the latter no question under section 258 of the old Code of Civil Procedure arises at all.

However, it has been assumed that the matter is an adjustment of a decree and that we are concerned with section 258. The lower Court has taken this view and has come to the conclusion that section 258 prevents the executing Court from recognising the adjustment in this case; but has decided, notwithstanding, that the plaintiff is estopped from seeking execution of the decree. On this point I concur with my learned colleague that there is not any estoppel.

Therefore, we are left to deal with the matter as an adjustment of the decree and to enquire what is the effect of section 258.

In my opinion section 258 of the Code of Civil Procedure of 1882 provided or intended to provide that the Court executing a decree should record as certified any payment or adjustment of the decree certified by the decree-holder or of which information and satisfactory proof were given by the judgment-debtor. That section laid down a special procedure for the case in which the judgment-debtor appeared as an applicant desiring that a payment or adjustment should be recorded as certified. The law also, in the Limitation Act, provides a period within which this special procedure may be followed.

In fact however that is not the only way in which a judgment-debtor informs the Court of a payment or adjustment. He seldom adopts the special procedure provided by section 258, but more often, as in this case, when the decree-holder has applied for execution and the judgment-debtor has received notice of the application, he pleads, in answer, a payment or adjustment. In the case before us, the judgment-debtor

asserts an adjustment of the decree and the decree-holder denies it; were the law to follow its usual course, the Court would enquire and decide whether that adjustment is proved and if it found the adjustment to be proved, would treat it so far as it went as an answer to the decree-holder's claim.

This would be in consonance with the whole spirit of our Code and with the express provisions of section 244.

It was however necessary, or at least desirable, to provide for the particular case in which a judgment-debtor should appear, not as an opponent contesting a claim in execution, but of his own initiative as an applicant seeking to establish a payment or adjustment of the decree. Section 258 deals only with this particular case and with payments &c. certified by the decree-holder.

It is however supposed that the Court is debarred from recognising in any way any payment or adjustment unless it is certified by the decree-holder or proved by the judgment-debtor in accordance with the special procedure provided by section 258. To so suppose is to run counter to the provisions of section 244 which provide that the Court executing the decree shall determine any question between the parties relating to the discharge or satisfaction of the decree, and if what is supposed to be the effect of the law be in truth its effect, it leads to a very singular result; for it means that a decree-holder may fraudulently apply to execute a decree twice over; and the Court is prohibited from enquiring whether there is or is not a fraud; and this in spite of the fact that the decree-holder seeks to debar the Court from enquiring into the fraud, by the device of refusing to do what the law says he must do.

If that be the effect of the law, then all I have to say is that the law intends the Court to be used, in this kind of matter, not as an instrument of justice but as an aid to fraud. And, as experience has shown, this is the very effect, where the law is understood to mean, what I am contending it does not and cannot mean.

It is to me abundantly clear that the legislature never intended such a result as an encouragement of fraud. Do the

1910.

TRIMBAK RAMKRISHNA v. HARI LAXMAN.

words of the law compel it? I think not; though section 258 is doubtless worded in such a way as to invite misunderstanding. The final clause of section 258 runs thus: "Unless such a payment or adjustment has been certified as aforesaid, it shall not be recognised as a payment or adjustment of the decree by any Court executing the decree."

The purpose of section 258 is that the Court shall have complete knowledge of all that is done towards the satisfaction of its decree. When an application for execution is presented, the Court enquires from its own records what has been previously done towards satisfaction. What it does not find on its own records it does not recognise: in this sense, that it at the outset assumes that what is not recorded as paid or adjusted, still remains unpaid or unadjusted. But it is still open to the judgment-debtor to assert and prove that what the decree-holder claims under the decree is not due, having been paid or adjusted; and it is still incumbent on the Court to go into the matter, if a contest on the point is raised. To state the result briefly, the final clause of section 258 raises a presumption, but does not limit the jurisdiction of the Court. This result appears to me to be inevitable if section 258 be read not by itself as an isolated enactment containing a complete statement of the law on the matter it deals with, but as a part of a whole and with reference to its place in the scheme of the Code and its relation to other parts of the scheme.

I am aware that the views, which I have just expressed, are not those which are commonly held. At the same time I am not sure that the argument stated in that form has ever been dealt with in any of the decisions which are contained in the Bombay Series of the Law Reports; and if that be so, seeing that the question does directly arise in this case, I think it may well be considered in the Court, which is to deal with this matter, and I should both be interested and pleased to see the case, if again it comes before the High Court, argued on the lines I have indicated. I have gone perhaps out of my way to express this opinion; but it is a matter which nearly affects the reputation of our Courts, and very closely affects the administration of justice; for

1910.

TRIMBAK RAMKRISHNA v. HARI LAXMAN.

to read the law, as it often is read, is, it seems to me, to reverse the principles of justice, and to convert the instruments of justice into instruments of fraud.

Order reversed.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

1910.
June 28.

CECIL GRAY, THE SECRETARY AND A MEMBER OF THE WESTERN INDIA TURF CLUB (ORIGINAL PLAINTIFF), APPELLANT, *v.* THE CANTONMENT COMMITTEE OF POONA (ORIGINAL DEFENDANT), RESPONDENT.*

Civil Procedure Code (Act V of 1908), sections 2 (17), 80—Public officer —Suit against public officer—Notice of claim necessary—Cantonment Committee is public officer—Cantonments Act (XIII of 1889)—Section 80 applies to actions ex delicto and not to actions ex contractu.

A Cantonment Committee constituted under the Indian Cantonments Act (XIII of 1889) is a "public officer" within the meaning of section 2, clause (17) of the Code of Civil Procedure (Act V of 1908). Before the Committee can be sued, the notice prescribed by section 80 of the Code must be given.

The notice contemplated by section 80 has to be given for actions sounding substantially in tort; and it makes no difference that those actions are, by operation of law, treated, for certain purposes, as actions *ex contractu*.

Rajmal v. *Hanmant* (1) considered.

APPEAL from the decision of C. Roper, District Judge of Poona.

Cecil Gray was the Secretary and a member of an unincorporated association styled the Western India Turf Club. He sued on behalf of himself and all other members of the Club.

Under a lease dated the 16th February 1907, made between the Secretary of State for India and the Club, the latter occupied certain lands and buildings in the Poona Cantonment on a rental of Rs. 1,200 per annum.

* First Appeal No. 9 of 1910.

(1) (1895) 20 Bom. 697.