

Anidba and Shivram v. Narayan afford any warrant for such a distinction as is here relied on.

Upon the whole, therefore, we must hold that the appellant here has not succeeded in showing that the decree of the Court below is incorrect, and we must, accordingly, confirm it with costs.

Decree confirmed.

1890.

PARASHRÁM
JETHMAL
v.
RAKHMÁ.

APPELLATE CIVIL.

Before Mr. Justice Bayley and Mr. Justice Telang.

PARVATA AND ANOTHER, (ORIGINAL OPPONENTS), APPELLANTS,
v. DIGAMBAR, (ORIGINAL APPELLANT), RESPONDENT.*

1890.

October 7.

Decree—Execution of decree—Assignee of decree under oral assignment—His right to execute decree—Civil Procedure Code (Act XIV of 1882), Sec. 232—Plea of fraud cannot be raised in execution proceedings.

An assignee of a decree under an oral assignment has no *locus standi* at all to apply for execution of a decree, but, as regards one who claims to be an assignee in writing or by operation of law, the Court has a discretion under section 23 of the Code of Civil Procedure (Act XIV of 1882), whether to recognize such assignment or not.

When an assignee of a decree applied for execution, and the judgment-debtors contended that the decree sought to be executed had been obtained by fraud, and was, therefore, a nullity and incapable of execution,

Held, that it was not open to the judgment-debtors to raise the defence of fraud in the course of the execution proceedings.

SECOND appeal from the decision of Ráo Bahádur N. G. Phadke, Joint First Class Subordinate Judge, A. P., at Sátára in Appeal No. 229 of 1889.

Rango Dhonddev obtained a decree against Parvata for possession of certain lands. By an oral assignment Rango transferred his rights under the decree to Digambar Lakshman. Thereupon Digambar applied for execution of the decree, but his application was rejected by the Court of first instance, on the ground that the decree sought to be executed had been obtained by fraud, and that the assignment of the decree was also fraudulent.

On appeal against this order of rejection, the Subordinate Judge with appellate powers held that it was not open to the Court

* Second Appeal No. 267 of 1890.

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 PARVATA
 v.
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in execution proceedings to go behind the decree for determining its fraudulent nature or otherwise, and that, under section 232 of the Code of Civil Procedure (Act XIV of 1882), the Court had a discretion to permit the assignee of a decree to enforce it. The Subordinate Judge, therefore, reversed the decision of the Court of first instance and ordered execution to issue.

Against this decision the judgment-debtors appealed to the High Court.

Dáji Abáji Khare for appellants.

Vásudev R. Joglekar for respondent.

BAYLEY, J :—In this case the applicant sought for execution of a decree obtained by one Rango against the defendants, alleging that the decree had been transferred to him under an oral assignment by Rango. On behalf of the defendants, the appellants, it was contended before us, among other defences, firstly that the decree had been obtained by fraud, and was, therefore, a nullity and incapable of execution, and secondly, that, in any event, the applicant had no right to obtain execution of it under the provisions of the Code of Civil Procedure. We decided at the hearing that the defence of fraud was not one which it was open to the appellants to raise in the course of execution proceedings such as the present. On the second point, we took time to consider, having regard to the definition of “decree-holder” which is contained in section 2 of the Civil Procedure Code, and to which no specific reference is made in the judgment of this Court in *Javermal v. Umáji* (1).

We have now considered the point and also spoken to the Chief Justice on the subject, and we are clearly of opinion that the decision in *Javermal v. Umáji* is right, and ought to be followed. If the definition of “decree-holder” contained in section 2 of the Civil Procedure Code is applied in the construction of section 230, the result will be that the Court, which has no discretion to refuse to issue execution at the suit of a person who obtains a decree (see *Ishan Chunder Roy v. Ashanoollah Khan* (2)) will have equally no discretion when applied to by one

(1) I. L. R., 9 Bom., 179.

(2) I. L. R., 10 Calc., 817.

to whom such person transfers a decree by assignment, oral or written. But by section 232 of the Code such a discretion is given in plain terms, when the application for execution is made by one to whom a decree is transferred by assignment in writing or by operation of law. It is impossible to suppose that the Legislature can have intended this result. The only rule that would harmonize the sections in question is the rule laid down in substance in *Javermal v. Umáji*, namely, that an assignee under an oral assignment has, as such, no *locus standi* at all to apply for execution of a decree, but that as regards one who claims to be an assignee in writing or by operation of law, the Court has a discretion whether to recognize such assignment or not. And this result can be arrived at by not applying the definition in section 2 to the construction of section 230 as being "repugnant to the context."

This being our view, the order of the Court below must be reversed, and the application of the applicant dismissed with costs.

Order reversed.

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

KA'LIDA'S JIVRA'M AND OTHERS, (ORIGINAL DEFENDANTS), APPELLANTS,
 v. GOR PARJARA'M HIRJI AND OTHERS, (ORIGINAL PLAINTIFFS), RES-
 PONDENTS.*

1890.
 October 8.

Civil Procedure Code (Act XIV of 1882), Secs. 26 and 30—Joint suit by persons who had a common cause of action—Declaratory decree—Denial of right—Perpetual injunction—Specific Relief Act (I of 1877), Secs. 42 and 54.

The plaintiffs were the hereditary *gors*, or priests, residing at Dáker, who ordinarily conducted their *yajmans*, or patrons, to the temple of Shri Ranchbod Ráiji, performed worship there on their behalf, and received remuneration for their services. The defendants were the *shevaks*, or ministers, of the idol; it was their duty to remain in constant attendance on the idol, perform the daily services at the temple, collect the offerings, and apply the same to the purposes of the foundation.

* Appeal, No. 36 of 1888.