

impliedly repudiated by the principal) is, therefore, one which, in my opinion, is open only to the Government of India or the Secretary of State for India in Council, and not to a party, who has freely contracted with the public agent and been in no way prejudiced by the latter's want of authority. Such an objection by a person, who is not shown to be a legal representative of the party to the contract, is still less maintainable.

I, therefore, concur in the decision that the application of the Summary Settlement to the lands in question was valid and legal.

Answer accordingly.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Fawcett.

RAMCHANDRA GOVIND THOMARE (ORIGINAL DEFENDANT), APPELLANT
v. JAYANTA BIN RAOJI PARAWAT (ORIGINAL PLAINTIFF), RESPONDENT*.

*Civil Procedure Code (Act V of 1908), section 47—Decree—Execution—
Executing Court cannot question the validity of the decree.*

Under section 47 of the Civil Procedure Code, 1908, the Court executing a decree cannot deal with the question whether the decree should stand or whether it should be set aside on any of the grounds on which a decree can be set aside.

Chintaman Vithoba v. Chintaman Bajaji⁽¹⁾, followed.

SECOND appeal against the decision of J. D. Dikshit, District Judge of Sholapur, reversing the decree passed by R. R. Sane, Subordinate Judge at Madha.

Proceedings in execution.

The decree under execution was passed on a private award. It directed that the judgment-debtor Jayavant to pay the decree-holder Ramchandra Rs. 900, by annual

* Second Appeal No. 799 of 1919.

(1) (1896) 22 Bom. 475.

1920.

REVENUE
JURISDICTION
ACT, 1876,
IN THE
MATTER OF
VASUDEV
HARIHAR
PANDIT,
In re.

1920.

July 26.

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instalments of Rs. 100 each; that in case two instalments were in arrears the decree-holder should recover the whole sum at once by sale of two lands belonging to the judgment-debtor. Default having been made the decree-holder filed a Darkhast for the recovery of the whole sum of Rs. 900.

The judgment-debtor contended that before the award was made which resulted in the decree in question, the decree-holder agreed to advance him Rs. 200 as a fresh loan and that that sum was included in the total of Rs. 900, that the decree-holder did not pay Rs. 200 as agreed and therefore the decree was vitiated by fraud.

The Subordinate Judge held that it was not open to the judgment-debtor to attack the correctness or validity of the decree under section 47 of the Civil Procedure Code, 1908; and even if it was he found that the judgment-debtor had not proved that the decree-holder had agreed to advance him Rs. 200. He, therefore, allowed execution to proceed.

On appeal, the District Judge was of opinion that the Court could in execution proceedings determine the question of the validity of the decree, and in the ends of justice, the Court had inherent powers to vacate the decree passed on a bogus award: section 151 of the Civil Procedure Code, 1908 and *Velchanad v. Liston*⁽¹⁾. He found that the judgment-creditor had agreed to advance Rs. 200 to the judgment-debtor as consideration for his consenting to a decree passed in terms of the award and this being not done the decree was passed on a bogus award.

He, therefore, vacated the decree made on the award and reversed the decree passed by the Subordinate Judge.

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The defendant appealed to the High Court.

P. B. Shingne, for the appellant :—The lower Court had no power to set aside the decree in execution proceedings. The respondent took no steps to have the decree set aside, and in execution he cannot get the relief. He could have moved the High Court in revision or brought a suit. The decree must, therefore, be executed. The lower appellate Court made out a new case for the respondent on the merits : see *Chintaman Vithoba v. Chintaman Bajaji*⁽¹⁾.

K. N. Coyajee, for the respondent :—The case of *Velchand Chhaganlal v. Lieut. Liston*⁽²⁾ authorises the Court to interfere in case the decree is vitiated by fraud. The earlier cases of the High Court also point to the same conclusion.

If this view is not accepted, the decree-holder, who is guilty of fraud, will be helped by Courts. The Court has inherent power to prevent the perpetuation of the fraud. On the finding in this case the decree-holder is guilty of fraud.

MACLEOD, C. J. :—In this case a decree was passed on a private award directing the judgment-debtor to pay the decree-holder Rs. 900 by annual instalments of Rs. 100 each. It also directed that in case two instalments were in arrears, the decree-holder should recover the whole sum at once by sale of two lands belonging to the judgment-debtor. Default having been made the decree-holder filed a darkhast for the recovery of the whole sum. The judgment-debtor contended that before the award was made, which resulted in the decree in question, the decree-holder agreed to advance him Rs. 200 as a fresh loan and that that sum was included in the total of Rs. 900. He thus practically said that as Ramchandra, the decree-holder, had not

⁽¹⁾ (1896) 22 Bom. 475.

⁽²⁾ (1914) 38 Bom. 638.

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paid him Rs. 200 as agreed, the decree was vitiated by fraud. The trial Judge came to the conclusion that it was not open to the judgment-debtor to raise this contention in the case. He also found that it was not proved that the decree-holder had agreed to advance the judgment-debtor Rs. 200 or that that sum was included in the decretal amount. He, therefore, directed that execution should proceed.

In appeal both these findings were reversed, the learned Judge coming to the conclusion that the judgment-creditor agreed to advance Rs. 200 to the judgment-debtor as consideration for his consenting to a decree passed in terms of the award. He also came to the conclusion that the award was a bogus one, and that therefore the Court had, on the true state of facts coming to its notice, the power to vacate the decree passed on such a bogus award and to prevent the abuse of the process of the Court. The Judge therefore, vacated the decree, reversed the decree of the lower Court and dismissed the plaintiff's application with costs throughout.

Whatever powers the Court had to decide questions relating to the execution of the decree, we are of opinion that it is perfectly clear that the Court had no power to deal with the decree itself. The Court executing the decree cannot deal with the question whether the decree should stand or whether it should be set aside on any of the grounds on which a decree can be set aside. In *Chintaman Vithoba v. Chintaman Bajaji*⁽¹⁾, it was held that the validity of a decree where execution is sought cannot be disputed in execution proceedings under section 244 of the Civil Procedure Code. It will be noted that in this case all that the judgment-debtor pleaded was that he had not

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received the Rs. 200 additional advance which was the inducement held out to him to consent to the decree for Rs. 900 instead for Rs. 700. But the learned appellate Judge went a great deal further than that and dealt with the question whether the Court which passed the decree on the award was justified in so doing. It is quite true that cases have been known where a money-lender as a condition for advancing money induces his borrower to consent to a bogus award on which a decree is passed. It may be that in this case this particular award decree was passed by means of such an arrangement. But whether that was so or not, it is perfectly clear that the executing Court had no jurisdiction to deal with the question, and the only question with which it had jurisdiction to deal with was the question whether the Darkhast should proceed.

The decree of the lower appellate Court must, therefore, be set aside and the order of the trial Court restored with costs in the first appeal Court and in this Court. Costs of the trial Court to be determined in execution.

FAWCETT, J.:—I concur. Section 151 of the Civil Procedure Code was cited as giving the lower appellate Court authority to interfere in the way it did. But, as was ruled in *Bhausing v. Chaganiram Hurchand*⁽¹⁾, that section was clearly not intended to give authority to superior Courts by way of conferring supplemental jurisdiction to that conferred by section 115 of the Code. The only legitimate ways in which the decree award could, so far as I can see, be set aside are under section 115, Civil Procedure Code, as was done in the case of *Velchand Chhaganlal v. Lieut. Liston*⁽²⁾, or by a separate suit.

Decree reversed.

J. G. R.

⁽¹⁾ (1918) 42 Bom. 363.

⁽²⁾ (1914) 38 Bom. 638.