

ORIGINAL CIVIL.

*Before Sir Norman Macleod, Kt., Chief Justice, Mr. Justice Kajiji,
and Mr. Justice Kemp.*

VELJI BHIMSEY & Co. (DEFENDANTS), APPELLANTS v. BACHOO BHIDAS
(PLAINTIFF), RESPONDENT².

1924.

March 10.

*Wrongful arrest—Decree against estate in hands of heirs—Application to
execute—Notice for renewal of judgment—Order for execution to proceed—
Arrest of defendant in accordance therewith—Liability of decree-holders—
Letters Patent, clauses 15 and 36—Powers of appellate Court.*

A Hindu died leaving three sons, two of whom were minors. A decree for the payment of money was obtained by certain creditors of the deceased against the assets of the said deceased in the hands of his heirs. After a lapse of over a year the decree-holders applied for execution, and a notice (for renewal of judgment) was issued under Order XXI, Rule 22 of the Civil Procedure Code. On the hearing of the notice the Court ordered "execution to issue against defendant No. 1". The decree-holders thereupon applied for execution against the person of the said defendant, and the latter was duly arrested on a warrant issued by the Deputy Registrar, but, on being brought before the Registrar a few hours later, was released on the ground that, the decree being against the estate of the deceased, the warrant of arrest was unjustified and illegal.

On the said defendant thereafter suing the decree-holders for damages for wrongful arrest and false imprisonment,

Held, that the order made on the notice was merely a formal order allowing execution to proceed, and, inasmuch as the decree-holders knew that they were not entitled under the decree to apply for the arrest of the defendants, the warrant of arrest obtained by them was to be attributed, not to an erroneous order on the part of the Court, but to an unjustifiable interpretation put upon the order by the decree-holders themselves, and they were, therefore, liable in damages for wrongful arrest.

Where, in the case of an appeal on the Original Side of the High Court, two Judges have differed in opinion, and that of the senior Judge has prevailed under clause 36 of the Letters Patent, there is no warrant for the suggestion that, on further appeal under clause 15, the Court is only entitled to consider the point, or points, on which the said Judges have differed.

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One Bhaidas Vallabhdas died in June 1920, leaving him surviving three sons, Bachoo Bhaidas (the plaintiff in this suit), Chotalal Bhaidas and Kika Bhaidas. Chhotalal and Kika were minors in the joint Hindu family. Bhaidas was heavily in debt at the time of his death.

Thereafter the firm of Velji Bhimsey & Co. (the defendants in this suit) sued the above heirs of the deceased Bhaidas in the Court of Small Causes, on a promissory note executed by the deceased, and on January 17, 1921. obtained a decree for the sum of Rs. 554-13-6. It was ordered (*inter alia*) in the said decree—

that in default of payment of the said sum of Rs. 554-13-6 by the defendants abovenamed the same shall be levied by seizure and sale of the property of Bhaidas Vallabhdas deceased which may have come to their hands as heirs and legal representatives of the said deceased to be administered.

After a period of over a year had elapsed the decree-holders applied for execution, and a notice (for renewal of judgment) was issued under Order XXI, Rule 22, requiring the judgment-debtors to show cause why execution should not be granted. At the hearing of this notice on June 24, 1922, there was no appearance on the part of the judgment-debtors, and an order was made *ex parte* in the following terms:—

“ Execution to issue against defendant No. 1.”

The decree-holders thereupon, on July 4, 1922, applied for a writ of execution against the person of Bachoo Bhaidas, the said defendant No. 1, and on the same day a warrant of arrest was issued against him by the Deputy Registrar. He was duly arrested on July 12, 1922, at about 9.30 a.m. Later in the day, at about noon, he was brought before the Registrar, and, the legality of his arrest being questioned and the matter argued by his solicitor, he was ultimately released at about 12.30 p.m. on the ground that, the decree being

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against the estate of the deceased, no warrant of arrest should have been issued against the first defendant's person.

Bachoo Bhaidas thereafter filed the present suit against the decree-holders, claiming Rs. 2,000 damages.

The trial Court (Mulla, J.) dismissed the suit with costs on the ground that the record of the proceedings in fact warranted the writ of arrest of July 4, and that it was well established that a valid order of the Court, however erroneous in law or in fact, was sufficient justification for any act done in pursuance thereof.

The plaintiff appealed, and the appeal came before Shah, Acting C. J., and Crump J. The learned Judges, however, differed in opinion, Shah, Acting C. J., holding that the writ of arrest was referable, not to the order of June 24, but to irregularity in the party making the application for personal arrest and that the plaintiff was therefore entitled to maintain the suit, but Crump J. holding that, on the facts of the case, there was an order of the Court justifying the writ of execution on which the plaintiff was arrested.

On the question of damages, however, the learned Judges were agreed, the Acting Chief Justice observing as follows:—

"The parties have not pressed for any further inquiry on the question of damages. I think that Rs. 100 would be sufficient to meet the justice of the case. I would, therefore, allow the appeal, reverse the decree of the trial Court, pass a decree in favour of the plaintiff for Rs. 100. The respondents to pay the costs of the appellant. Each party to bear his own costs of the suit, having regard to the provisions of section 22 of the Presidency Small Cause Courts Act."

Under clause 36 of the Letters Patent, the opinion of the Senior Judge, Shah, Acting C. J., prevailed, and a decree was drawn up in accordance therewith.

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The defendants appealed under clause 15 of the Letters Patent, and cross-objections were filed by the plaintiff.

The appeal was heard by a bench consisting of Macleod C. J. and Kajiji and Kemp JJ.

Compbell and Kania, for the appellants.

M. V. Desai, for the respondent.

MACLEOD, C. J. :—The plaintiff brought this action to recover damages for wrongful arrest and imprisonment.

The suit was dismissed by Mr. Justice Mulla and on an appeal from that decision, the Judges of the appeal Court differed. The Acting Chief Justice was of opinion that there should be a decree for the plaintiff for Rs. 100 as damages. Mr. Justice Crump was of opinion that the appeal should be dismissed. Under clause 36 of the Letters Patent, the opinion of the senior Judge prevailed. Accordingly there was a decree for the plaintiff for Rs. 100. But under section 22 of the Presidency Small Cause Courts Act, as the plaintiff had recovered less than Rs. 300, no order was made with regard to his costs in the trial Court. The plaintiff has now appealed under clause 15 of the Letters Patent.

The facts of the case as set out in the judgment of the Acting Chief Justice are that the firm of Velji Bhimsey & Co. filed a suit against the present plaintiff and his two minor brothers as surviving members of a joint Hindu family, on a promissory note passed by Bhaidas Vallabhdas deceased, a late member of the family. A decree was passed in favour of the plaintiffs for Rs. 510-9-6 and costs, and it was ordered that, in default of payment of the decretal amount by the defendants, the same was to be levied by seizure and sale of

the property of Bhaidas Vallabhdas deceased that would come to their hands as his heirs and legal representatives.

The money was not paid and no execution was levied for a year after the date of the decree. On May 11, 1922, a notice for renewal of judgment under Order XXI, Rule 22, was issued. The defendant did not appear and an order was made on June 24, 1922, in these terms: "Execution to issue against defendant No. 1." On July 4, the plaintiffs Velji Bhimsey & Co. applied for execution against the person of defendant No. 1, and a warrant was issued by the Deputy Registrar for the arrest of the first defendant. He was arrested at 9-30 a.m. on the morning of July 12, 1922, and produced before the Registrar, who made the following order: "Decree against the estate of the deceased. No execution by arrest should have been issued against the first defendant's person. Warrant of arrest bad and illegal and not justified by the tenour of the decree." Accordingly the defendant was released.

The present defendants seem to base their defence on the order made on June 24, 1922, and contend that under that order, they were entitled to apply for the arrest of the first defendant. But that order was merely a formal order allowing execution to proceed, and it cannot possibly be said that it entitled the plaintiffs in the suit to apply for a warrant for the arrest of the first defendant.

The plaintiffs in the Small Cause Court suit knew perfectly well that they were not entitled under that decree to apply for the arrest of the defendants. They must have known or ought to have known that the order of June 24, 1922, merely enabled them to proceed with the execution of the decree, and as the decree

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only entitled them to execute it against the property of Bhaidas in the hands of the defendants, they must be taken to have been aware, when they applied for the arrest of the first defendant, that such conduct was not justified. The plaintiff, therefore, is entitled to damages for wrongful arrest.

The respondents have filed cross-objections and ask to have the damages increased. There was no excuse whatever for the action of the defendants. To arrest a man without any justification is a very serious matter and may have very serious consequences. The consequence of limiting the decree to one hundred rupees was that the plaintiff under section 22 of the Presidency Small Cause Courts Act could not be given the costs of the suit. It has been argued that we are only entitled to consider the point on which the Judges in the Court of Appeal have differed. There is no warrant for that argument. Under clause 36 of the Letters Patent, the opinion of the senior Judge prevailed. Under clause 15 an appeal lies from that decree, without any limitation being imposed upon the powers of the Appeal Court. The whole decree lies open before us, and on the question of damages, we do not think that the sum of Rs. 100 awarded, in the circumstances of the case, is sufficient. On the cross-objections, we increase the damages of the respondent to Rs. 300, so that the plaintiff will get his costs throughout.

KAJIJI, J. :—I concur.

KEMP, J. :—I also concur.

Solicitors for the appellants: Messrs. *Matubhai, Jamietram & Madan.*

Solicitors for respondents: Messrs. *Thakoredas & Co.*

Decree varied.

O. H. B.