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alter a decree of his own Court on the ground that it was wrongly decided. That he had no power to do. Order XX, rule 3, expressly prohibits a Judge from altering a judgment once signed except as provided by section 152 or on review, and there was no mere clerical error to be corrected and no ground for review. It was not permissible for the plaintiff to avoid this express prohibition by filing a plaint instead of a review petition. Nor has a Judge power to hear an appeal against his own decision even if the appeal petition is disguised as a plaint. But here the Thana Court was not asked to alter a decree of the High Court. It was merely asked to ignore it on the ground that it was not a decree of a competent Court and section 44, Indian Evidence Act, and section 11, Civil Procedure Code, by implication empower Courts to ignore orders issued by Courts without authority. If the Thana Court was bound to accept the High Court decree the said sections are meaningless and useless.

Decree reversed.

J. G. R.

APPELLATE CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Murphy.

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February 10

THE SHOP STYLED AS "PANAJI GIRDHARLAL" BY ITS OWNER JAGANNATH GIRDHARLAL (ORIGINAL DEFENDANT), APPELLANT *v.* RATANCHAND HAJARIMAL MARWADI (ORIGINAL PLAINTIFF), RESPONDENT.*

Decree—Execution—Decree for money—Piecemeal execution, whether permissible.

A party having a right to execute a decree for money presently payable must enforce the whole decree at the same time.

Where, therefore, a judgment-creditor has obtained a decree for principal and interest to date of payment and costs, and has applied for execution, and executed

*Letters Patent Appeal No. 8 of 1931.

it in respect of the principal and costs, he cannot subsequently put in a fresh application for interest only.

APPEAL under the Letters Patent against the decision of Madgavkar J. in second Appeal No. 914 of 1928, preferred against the decision of A. Majid, Assistant Judge at Poona, reversing the order passed by T. S. Saldanha, Subordinate Judge of Talegaon.

Proceedings in execution.

Facts material for the purposes of this report are stated in the judgment of His Lordship the Chief Justice.

V. D. Limaye, for the appellant.

G. B. Chitale, for the respondent.

BEAUMONT C. J. This is an appeal under the Letters Patent from the decision of Mr. Justice Madgavkar given in second appeal, and the appeal raises a question of some importance in connection with the law of execution. The plaintiff got a judgment for a sum of Rs. 1,359 and for costs of the suit and interest at the rate of 6 per cent. per annum from the date of the filing of the suit. In the year 1924 the plaintiff filed a darkhast asking for payment of the principal sums awarded by the decree and costs. The form of the application follows Form 6 in appendix E to the schedule of the Civil Procedure Code. It states in paragraph 7, in accordance with the requirements of Order XXI, rule 11 (2) (*g*), that the claim in suit is Rs. 1,359 to be paid to the plaintiff and costs and interest at the rate of 6 per cent. per annum from the date of filing of the suit. Then in column 8 it shows what costs have been awarded and totals up those costs, with the sum of Rs. 1,359, as amounting to Rs. 1,615-10-8. Then in the tenth column the plaintiff prays that the total amount of Rs. 1,615-10-8 and the costs of taking out this execution be realised by attachment and sale of defendant's moveable property. So that what the plaintiff asks for is payment

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of the principal sum and costs awarded by the decree, but he does not ask for execution in respect of the interest awarded to him subsequent to the decree. The amount claimed in that darkhast was paid by the judgment-debtor, and in the year 1926 the plaintiff took out the present darkhast asking for the interest awarded to him by the original decree, and for certain other costs which have been paid and upon which no question arises. The question we have to determine is whether the present darkhast, in asking for moneys covered by the original decree and not asked for in the first darkhast, is permissible. The trial Court held that the darkhast was bad. The lower appellate Court disagreed with that finding and held the darkhast good, and in second appeal Mr. Justice Madgavkar agreed with the lower appellate Court and held the darkhast good.

It was not disputed in the lower Courts, and has not been disputed here, that Order II, rule 2, which prevents multiplicity of suits is not applicable to proceedings in execution. But one may observe that that order shows that the general policy of the framers of the Civil Procedure Code was to require parties who have got certain rights to assert them all at the same time and not piecemeal. Mr. Justice Madgavkar accepted two propositions, first that where the decree sought to be executed gives two different reliefs, for example, possession of immoveable property and mesne profits, the decree may be executed separately in respect of the possession and mesne profits. There is plenty of authority in support of that proposition, upon which I desire to cast no doubt whatever. The second proposition which the learned Judge accepted was that, generally speaking, piecemeal execution of a money decree is not permissible. But the view he took was that in the absence of any definite rule of law compelling the decree-holder to apply for interest at the same time as the principal it was permissible for the darkhast-holder to make separate applications for such principal and interest. So that,

I think he really held that this case came within the principle that where a decree gives different reliefs it can be separately executed. I am not prepared to accept that view. It seems to me that a judgment for principal and interest is a single money decree, and cannot be said to give different forms of relief, and I think that the question which we really have to consider is whether there is any objection in India to executing a money decree in several stages. Mr. Chitale for the respondent has contended that there is nothing in the Code which prevents piecemeal execution. That no doubt is so, but the contention seems to view the proposition from the wrong angle. Under English law it is not permissible to levy execution of a money decree in different stages. It has been held that where there is only one judgment for a sum of money there can only be one execution upon it, see *Forster* v. *Baker*.[1] If piecemeal execution is permissible in India it seems to me that the party executing must show, not that that right is forbidden by the Code, but that it is conferred by the Code. There is nothing in the Code which expressly authorises piecemeal execution, and a good many of the provisions of Order XXI, which deals with execution, seem to me opposed to the idea that there can be more than one execution of a money decree. For example, rule 10 of Order XXI provides for the execution of the decree, and not of a portion of the decree. Rule 11 (2) (*g*) provides that in the particulars to be stated in the application for execution the amount with interest if any due upon the decree must be stated, and there is no express provision for stating the amount for which the execution-creditor desires to levy execution. Rule 15 provides for the execution of a decree passed jointly in favour of more persons than one and provides for the whole decree being executed by one of the joint holders, and does not confer any power on the joint holders to execute the decree to the extent of their respective interests. The

[1] [1910] 2 K. B. 636.

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proviso to rule 17 and the terms of rule 64 also seem to me to suggest that the decree must be executed for the amount payable under it. In my opinion, there is no authority for the proposition that a single money decree for sums immediately payable at the date of execution can be executed at different times. I think that the correct rule, and certainly the rule of convenience, is that a party having a right to execute a decree for money presently payable must enforce the whole decree at the same time. We were referred to several cases and the only one which seems to me definitely against the view which I am expressing is the case of *Upendra Nath Bose* v. *K. B. Dutt.*[1] There the learned Judges accept the view expressed by Sir Barnes Peacock in an earlier case that piecemeal execution is not permissible, but they say that the objection should be taken to the first execution, and not to the second execution which is to recover the whole balance payable. With all respect to the learned Judges who decided that case, the question does not turn upon the legality of the first execution, but upon its effect. There is, I apprehend, no legal objection to a judgment-creditor giving up part of his rights. If a man recovers judgment for Rs. 1,000 there is nothing to prevent him saying that he is willing to execute it only for Rs. 500. That execution is not invalid, but the question is whether the effect of that execution is to prevent execution for the balance of the judgment debt. To my mind that is the effect. I think that if a person having a right to recover a certain sum under a decree asks the Court to enforce that decree for a less sum, he must be taken to waive his right to levy execution for the balance. Certain cases were referred to by Mr. Chitale arising under Article 182 of the Indian Limitation Act in which it was held that a Darkhast for part of the amount due would be a step in execution which would prevent a subsequent Darkhast from being time-barred. But the actual question which

[1] (1926) 53 Cal. 582.

we have to decide was not considered or discussed in those cases. In my opinion, therefore, this appeal must be allowed and we must hold that the effect of the earlier Darkhast for a portion of the amount due at the date thereof was to prevent the judgment-creditor from taking subsequent Darkhast proceedings for the balance.

MURPHY J. The point we have to decide is whether, when a judgment-creditor has obtained a decree for principal and interest to date of payment and costs, and has applied for execution, and executed it in respect of the principal and costs, and subsequently puts in a fresh application for interest only—a prayer omitted in the previous application—he can be allowed to execute it, or is barred from so doing by the principle contained in Order II, rule 2. Order II, rule 2, does not apply to applications for execution and there is, in the rest of the Code, neither a prohibition against, nor permission for such procedure, and there is no case exactly in point. The case law, which has been relied on in the course of the arguments and by the appellate Judge who first heard the appeal, is contained in *Upendra Nath Bose* v. *K. B. Dutt*,[1] *Somasundaram* v. *Chokkalingam*,[2] *Balasubramania Chetti* v. *Swarnammal*,[3] *Sadho Saran* v. *Hawal Pande*,[4] and *Radha Kishen Lall* v. *Radha Pershad Singh*.[5] Of these cases that of *Somasundaram* v. *Chokkalingam*[2] is the nearest analogy, but what was allowed to be executed there was a second application for interest on a sum which had been recovered from the person who had been paid, on the reversal of the decree in appeal, under which he obtained it. The remaining cases allowing separate execution of different parts of the same decree really deal with matters which are essentially separate, such as a decree for possession and mesne profits, or for possession and costs. Mr. Chitale has also relied on certain cases which are really

[1] (1926) 53 Cal. 582.
[2] (1916) 40 Mad. 780.
[3] (1913) 38 Mad. 199.
[4] (1893) 19 All. 98.
[5] (1891) 18 Cal. 515.

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authorities on the question of what is a step in aid of execution in accordance with law, under the Indian Limitation Act. But these do not seem to me to be in point in this matter. Rules 10 and 15 of Order XXI suggest that what should be prayed for is execution of the decree as a whole, and Form 6 in Appendix E seems to me to require a claim for principal and interest to be made in the same application, such a decree being essentially a money decree for the total amount in both cases. I agree that the decree appealed against must be reversed and the execution application dismissed with costs throughout.

Appeal allowed.

J. G. R.

PRIVY COUNCIL.

J. C.* 1933 *March* 23

CHATURBHUJ PIRAMAL (PLAINTIFFS), APPELLANTS *v.* CHUNILAL OOMKARMAL (DEFENDANT), RESPONDENT.*

[On Appeal from the High Court at Bombay]

Attachment—Debt—Seizure of debt by Indian State—Situs of debt—Legality of seizure—Jurisdiction of High Court.

The respondent and one S were both resident in and subjects of the Indore State. The respondent carried on business as a commission agent at Indore also at Bombay, his head office being at Indore. S had dealings with the respondent through both offices, a separate account being kept at each. On April 17, 1924, a sum of nearly two lakhs was owing by the respondent to S on the Bombay account; the Indore account was about even. On that date a notice was served on the respondent by order of the Indore Government requiring him to pay to it the sum owing to S on the Bombay account. The debt was accordingly transferred to the Indore account without the consent of S and on May 15, 1924, was credited to the ruler of Indore. On May 16, 1924, the appellants served on the respondent an order of the High Court, made in a suit which he had brought against S attaching before judgment the debt in question. The appellants having obtained later a decree in their suit against S sued, the respondent claiming to enforce the attachment.

Held, that as the contract between the respondent and S did not provide expressly or impliedly that payment was to be solely, or primarily, at Bombay, or make the debt enforceable only there, the *situs* of the debt was Indore; and that it had been

**Present:* Lord Atkin, Lord Thankerton, Lord Macmillan, Sir John Wallis and Sir George Lowndes.