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claim made by the plaintiff as to his share in the property, and, the omission of certain parties to the suit in the first instance has enhanced the ordinary bill of costs. Upon consideration of all the circumstances of this case we think that the trial Court's order in regard to costs should be modified and we order that the costs of the parties in the trial Court after remand shall come out of the ancestral property before that property is subjected to a division in terms of the decree for partition. We do not disturb the order as to costs passed in the first appeal and the order of remand. Subject to that modification the decree appealed from is confirmed. As regards costs of the second appeal, we direct that the appellants, having in substance failed, must bear their own costs and those of the respondents.

MACKLIN J. I agree.

Decree varied.

J. G. R.

APPELLATE CIVIL.

Before Mr. Justice Wassoodew and Mr. Justice Sen.

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September 16

G. N. ASUNDI, PLEADER, THE RECEIVER OF THE ESTATE OF THE JUDGMENT-DEBTORS, SHIVAPPA BASAPPA KATTI AND MAHADEVAPPA BASAPPA KATTI, APPELLANT *v.* RAO SAHEB VIRAPPA ANDANEPPA MANVI (ORIGINAL DARKHASTDAR), RESPONDENT.*

Civil Procedure Code (Act V of 1908), O. XXI, r. 16—Decree—Execution—Transferee—Assignment—Operation of law—Interpretation.

In 1933, the respondent brought a suit against his son to obtain a declaration that he alone had a title to certain promissory notes; and in 1935 he obtained a decree which granted him the declaration, recognising his ownership to the amounts that would be due after August 20, 1931. The son had previously, that is, in 1931, obtained decrees on these promissory notes, which were confirmed in 1934.

In 1936, the respondent having applied to execute the decrees, the appellant, a Receiver of the estate of the judgment-debtors, contended that the respondent

*First Appeal No. 145 of 1937 with First Appeal No. 146 of 1937.

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had no right to execute the decrees, there being no assignment in writing, nor was the respondent a transferee by operation of law :—

Held, (1) that the respondent was not a transferee by operation of law ;

Abidunnissa Khanoom v. *Amirunnissa Khanoom*,[1] *Panda* v. *Savla*[2] and *Prabhashinee Debi* v. *Rasiklal Banerji*,[3] followed.

(2) That the respondent was the assignee in writing of the decrees in question and therefore entitled to apply in and proceed with the execution.

Periakatha Nadar v. *Mahalingam*,[4] referred to.

FIRST APPEAL from the decision of G. A. Balse, First Class Subordinate Judge, Dharwar, in Darkhast No. 47 of 1936.

Proceedings in execution.

In 1930, Rachappa, respondent's son, brought against Shivappa and Mahadevappa civil suits Nos. 28 and 32 of 1930 to enforce certain promissory notes and in 1931 he obtained decrees in those suits. There were appeals against these decrees (First Appeals Nos. 178 of 1931 and 170 of 1931) but the High Court confirmed them on January 24, 1934.

Shortly before this, that is, on December 22, 1933, the respondent brought suit No. 14 of 1934 against his son to obtain a declaration that he alone had title to the promissory notes in question and on September 24, 1935, he obtained a consent decree in these terms :—

"There is no objection to grant a declaration and an injunction to the plaintiff in this suit that he (the plaintiff) is the owner to the amounts that would be due after the date August 20, 1931, by the defendants in special civil suit No. 28 of 1930 and 32 of 1930 in respect of the said special civil suit No. 28 of 1930 and 32 of 1930 and the decree in appeals Nos. 178 of 1931 and 170 of 1931 preferred therefrom."

In 1936, the respondent applied to execute the decrees in suit Nos. 28 and 32 of 1930 by attachment of certain properties in the possession of the appellant, as Receiver of the estate of Shivappa and Mahadevappa, when the latter contended that the respondent had no *locus standi* to execute the decrees.

(1) (1876) L. R. 4 I. A. 66, s. c. 2 Cal. 327, P. C.
(2) (1925) 27 Bom L. R. 1109.
(3) (1931) 59 Cal. 297.
(4) [1936] A. I. R. Mad. 543.

The learned Subordinate Judge overruled the contention and directed execution to proceed, observing as follows :—

" The decree under execution is one passed on a promissory note and in favour of the promisee, who is a son of the darkhastdar. The darkhastdar sued for and has obtained a declaration against his son that he is entitled to recover the amount of the decree (*vide* exhibit 5). It is on the basis of this declaratory decree that the darkhastdar is seeking to execute the decree passed in his son's favour.

" The Receiver relies on the ruling in I.L.R. 57 Bom. 513 as supporting his contention that the darkhastdar has no *locus standi* in this case. The ruling, however, is, in my opinion, distinguishable from the present case. For, in that case, the decretal debt did not specifically form the subject matter of the suit, while in the present case the suit specifically referred to the decretal debt. Moreover, the declaratory decree from which the darkhastdar has derived his right to execute the decree under execution, is a consent decree, by the terms of which the son who was the original decree-holder has relinquished all his rights to the decretal amount and constituted the darkhastdar the owner of the same.

In these circumstances I hold that the darkhastdar can execute the decree."

The Receiver appealed.

R. A. Jahagirdar, for the appellant.

A. G. Desai, for the respondent.

WASSOODEW J. The facts giving rise to these appeals, which raise the same question, so far as a statement thereof is necessary for the present purpose, are briefly these. The appellants Shivappa and Mahadevappa, whose estate is represented by the Court Receiver, had executed certain promissory-notes in favour of the sons of the respondent Virappa. The promisees obtained decrees against them in 1931 which were confirmed in appeal by the High Court on January 24, 1934. Before the result of those appeals, the respondent, the father of the promisees, filed a suit in December, 1933, against the latter for a declaration that he alone had title to the promissory-notes. That suit was terminated by a consent decree on September 24, 1935. The said consent decree recorded the agreement between the parties which, so far as it affected their rights to the decrees on the promissory-notes, was in these terms :—

" There is no objection to grant a declaration and an injunction to the plaintiff in this suit that he (the plaintiff) is the owner of the amounts that would be due after the date August 20, 1931, to the defendants (the promisees)."

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That agreement purported to bear the signatures both of the promisees, the sons of the respondent and also the respondent himself. Upon presentation of that agreement the Court directed that it should be recorded, and that a decree in terms thereof passed. Accordingly a decree was passed in those terms. In June, 1936 the respondent filed two execution applications to execute the decrees on those promissory-notes obtained by his sons in the Court of the First Class Subordinate Judge at Dharwar under O. XXI, r. 16, of the Civil Procedure Code, after recognising him as the transferee of the decrees by operation of law, and also for attaching the property of the judgment-debtors, which was then in charge of the Receiver appointed in a partition suit instituted by their co-sharers. The receiver who appeared on behalf of the judgment-debtors objected to the execution on the ground that the respondent had no right to execute the decrees there being no assignment in writing, and that he was not a transferee by operation of law. That contention was overruled by the learned First Class Subordinate Judge who distinguished on the facts the authority of *Mahadeo Baburao* v. *Anandrao Shankarrao*[1] relied on by the Receiver, and orders for attachment were issued. The property we are told has since been attached. Against those orders the receiver of the estate of the judgment-debtors has filed these appeals.

The principal question is whether the respondent, who had applied in execution, is entitled to make those applications to execute the decrees obtained by his sons against the appellants, first, on the ground that he is a transferee of those decrees by operation of law, and alternatively on the ground that he is a transferee by assignment in writing implied in the application sent by the decree-holders to the Court to pass a decree recognizing the respondent's title to the decrees as against the decree-holders themselves.

[1] (1933) 57 Bom. 513.

Rule 16 of O. XXI of the Civil Procedure Code provides that—

"where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it."

That rule further provides for a difference in the procedure where the decree-holder is a transferee by assignment in writing and where he is a transferee by operation of law. In the former case notice of the application has to be given to the transferor and the judgment-debtor, and the decree cannot be executed until the Court has heard their objections (if any) to its executon. No such notices have been given by reason of the contention that the transfer was by operation of law which prevailed in the Court below.

The expression "transfer by operation of law" has been interpreted in numerous decisions in India. It has received restrictive interpretation in *Mahadeo Baburao* v. *Anandrao Shankarrao*,[1] which followed certain observations of the Judicial Committee of the Privy Council in *Abidunnissa Khatoon* v. *Amirunnissa Khatoon*.[2] In *Mahadeo Baburao's* case[1] the plaintiff's grandmother whilst she was in management of his property obtained a money-decree and succeeded in recovering the first instalment provided thereunder. The plaintiff thereafter obtained a decree against the grandmother establishing his adoption which entitled him to obtain possession of the family property in her possession. He then applied to execute the decree obtained by the grandmother without obtaining an assignment in writing, treating himself as a transferee by operation of law. It was held that he could not do so under O. XXI, r. 16. Mr. Justice Rangnekar interpreted the expression "by operation of law" as follows (p. 517) :—

"In my opinion, according to the natural meaning of the words a transfer by operation of law means a transfer on the death or by devolution or by succession, and a transferee by operation of law would be a legal representative of the deceased

[1] (1933) 57 Bom. 513.
[2] (1876) L. R. 4 I. A 66 s. c. 2 Cal. 327, P. C.

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decree-holder, or the person in whom the interest of the decree-holder has become vested under a statute, e.g., the Official Assignee of an insolvent under the Presidency-towns Insolvency Act, or the purchaser at a Court sale in execution of a decree."

Wassoodew J. The latter illustration was perhaps suggested by the observations of the Privy Council in *Dinendronath Sannyal* v. *Ramcoomar Ghose*.[1]

The facts in *Abidunnissa Khatoon* v. *Amirunnissa Khantoon*[2] were these. One Wahed Ali brought a suit against his father Abdool Ali, to recover possession of considerable property. In the course of the suit Wahed died, and under the powers given by s. 103 of Act VIII of 1859, his widow Abidunnissa's name was substituted in his place. Ultimately a decree was given in her favour. A posthumous son was born to Abidunnissa, and he later on applied for executing the decree obtained by his mother. The legitimacy of that son was questioned by the judgment-debtor, the father of the original plaintiff, and the question was decided ultimately in the son's favour by the High Court. The judgment-debtor then appealed to the Privy Council. Their Lordships dealing with the procedure in execution laid down by s. 208 of Act VIII of 1859 which in terms corresponds to the provisions of O. XXI, r. 16, made the following observations (p. 73) :—

"It appears to their Lordships, in the first place, that, assuming Wajed to have the interest asserted, the decree was not, in the terms of this section, transferred to him, either by assignment, which is not pretended, or by operation of law, from the original decree-holder. No incident had occurred on which the law could operate, to transfer any estate from his mother to him. There had been no death; there had been no devolution; there had been no succession. His mother retained what right she had; that right was not transferred to him; if he had a right, it was derived from his father; it appears to their Lordships, therefore, that he is not a transferee of a decree within the terms of this section."

It seems clear from the above that it was thought that the phrase " by operation of law ", was susceptible of restrictive interpretation; for if it were otherwise, the son of the decree-holder being the person in whom the property of the

[1] (1880) L. R. 8, I. A. 65 at p. 75, s. c. 7 Cal. 107, P. C.
[2] (1876) L. R. 4 I. A. 66, s. c. 2 Cal. 327, P. C.

deceased Wahed Ali was vested as an heir under the Mahomedan law, and consequently an assignee of the decree in equity, could be regarded as a transferee by operation of law, the decree having been obtained by his mother as representing his father's estate. It seems the possibility of bringing equitable rights within the expression was present to the mind of Rangnekar J., for he appears to have considered whether the decree obtained by the grandmother could be regarded as an asset devolving upon the adopted son upon his adoption. But the Courts in both the cases did not attempt to interpret the expression liberally. It is suggested that the observations in *Abedoonissa Khatoon* v. *Ameeroonissa Khatoon*,[1] are illustrative and not exhaustive. That does not seem to be the case. Their Lordships refer to the fact that no incident had occurred on which the law could operate to transfer any estate from his mother to Wahed, for, there was no death, no devolution and no succession. The other contingencies or possibilities of devolution did not in their Lordships' opinion matter. They accordingly gave illustrations of the kind of cases contemplated by the rule.

In *Purmanandas Jivandas* v. *Vallabdas Wallji*,[2] Sir Charles Sargent C. J. was dealing with the effect of an assignment by the trustees of the property of one Ranchordas under the latter's will, which directed them to assign the entire property to one Purmananddas as soon as he came of age. The assignment was made by the trustees in the most natural terms in 1870 after a suit had been filed by them to recover money due to the estate and which was still pending. The effect of that assignment was to vest in Purmananddas the whole interest in the decree subsequently obtained in that suit. Upon objection taken to the execution of that decree by Purmananddas that he was not a transferee of the decree under s. 232 of the Civil Procedure

[1] (1876) L. R. 4 I. A. 66, s. c. 2 Cal. 327, P. C.
[2] (1887) 11 Bom. 506.

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Code, the following observations were made overruling the objection (p. 512) :—

"There is no doubt that, in a Court of equity, in England the decree would be regarded as assigned to Purmanandas, and he would be allowed to proceed in execution in the name of the assignors. Here there is no distinction between 'law' and 'equity', and by the expression 'by operation of law' must be understood the operation of law as administered in these Courts. We think under the circumstances that we must hold that this decree has been transferred to Purmanandas 'by operation of law'. In the present case the decree has been transferred by an assignment in writing as construed in these Courts."

It is difficult to understand the exact significance of the last sentence or to reconcile it with the preceding one. The reasoning adopted seems to be that although the assignment was prior to the decree it purported to convey not in law but in equity the decree subsequently obtained. But the last sentence suggests that by force of law and equity the prior assignment was regarded as an assignment in writing of a subsequent decree. At any rate we feel bound by the interpretation in *Abidunnissa Khatoon's* case, of the expression in question.

In a later case of *Pandu* v. *Savla*[1] the applicant in execution had obtained a decree directing that the interest in a prior decree obtained by the judgment-debtor should be transferred to the applicant upon terms, and it was held that the subsequent decree did not operate in law to convey or transfer or assign the interest of the decree-holder in the prior decree to the applicant for "he had only a right under his own decree to obtain an assignment from the decree-holder of the other decree". There are similar observations in *Virappa* v. *Mahadevappa*.[2]

In *Ramasami* v. *Anda Pillai*,[3] a Hindu obtained in 1878 a decree for partition of certain property, and he applied in 1888 to have it executed. He relied in bar of limitation on an application for execution made by his son, who had

[1] (1925) 27 Bom. L. R. 1109.
[2] (1934) 36 Bom. L. R. 807.
[3] (1890) 14 Mad. 252.

obtained a decree against him in 1881 in a partition suit, whereby his right was established to one-fifth of whatever should be acquired by the father by virtue of the decree of 1878. It appears that the son had applied for execution of the whole decree, stating that his father would not join in spite of notice. It was held that the son was an assignee by operation of law of one-fifth of the judgment debt. In the absence of any reasoning underlying the decision, it is difficult to say what induced that conclusion. It is however permissible to surmise that the decision is perfectly reconcilable with the other cases placing a limited interpretation on the expression "by operation of law", for the effect of a partition decree according to Hindu law is severance of status and the vesting in severalty of the individual shares in the different members of the coparcenary. It was therefore possible to say that there was devolution of specific interest by operation of law. It may be noted that in *Prabashince Debi* v. *Rasiklal Banerji*[1] the Court approved of the view expressed in *Pandu* v. *Savla*.[2] There the appellant, who was the assignee of property with all arrears of rent, made an application to be permitted to execute, under O. XXI, r. 16, a decree passed subsequent to the assignment, in respect of some arrears of rent, in a suit by her assignor, and it was held that she was not entitled to apply for execution, not being a transferee by operation of law.

Mr. Desai has suggested on behalf of the respondent that the question of widening the application of the expression "by operation of law" was not considered in the cases cited against him, and that, having regard to the provisions of the Civil Procedure Code and the fact that the rule is not exhaustive, it would be necessary and proper to give an extensive and comprehensive meaning to the expression particularly in view of the observations in *Purmanandas Jiwandas* v. *Vallabdas Wallji*.[3] His argument is that the father in this

[1] (1931) 59 Cal. 297.

[2] (1925) 27 Bom. L.R. 1109.

[3] (1887) 11 Bom. 506.

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case, the respondent, became a holder of the title to the decrees by force of the consent decree passed in the suits against the sons, and, as according to law such a decree, which is the act of the Court, vested the right in the decree in the father without more, the latter became a transferee according to law or by operation of law. He has relied upon the definition of the word "decree-holder" in s. 2 (*3*) and the word "legal representative" in s. 2 (*11*) of the Civil Procedure Code. His argument is that although the term "decree-holder" does not include a transferee, yet when an order is made in his favour by the Court upon enquiry into his title, it is within the power of the Court to recognize him as a transferee and permit him to execute the decree, particularly when the question of the decree-holder's legal representative for the purpose of s. 47 of the said Code has to be determined by the Court itself. It is further urged that the expression "transfer by operation of law" is a genus of which "an assignee in writing" is a species, for, the provisions of s. 146 of the Code are wide enough to enable any person claiming under a decree-holder in law to apply in execution and the right is not restricted. That is so, proceeds the argument, because transfer "by operation of law" covers all kinds of transfers private and through Court. Now the obvious difficulty in accepting that reasoning for the purpose of permitting every representative of a decree-holder to execute a decree lies in the special provisions of r. 16 of O. XXI. The general provisions, in my opinion, cannot be invoked for overcoming the difficulty. If the argument is carried to its logical conclusion, it would be possible to say, by reason of the provisions of the Specific Relief Act particularly s. 3, and s. 5, cls. (*b*) and (*c*) read with s. 54, that every act of the Court manifested by its decree declaring title in the subject-matter of another decree in favour of the decree-holder and every private transfer of a decree, which in law has the effect of vesting the decree in the transferee, is a transfer by operation of law. Now the legislature has in

the rule made a distinction in procedure between a transfer by assignment in writing and a transfer by operation of law, and if the latter expression was intended to convey every possible kind of transfer it would be unnecessary and superfluous to create that distinction. The expression "assignee in writing" could not obviously be regarded, having regard to the position of the two expressions, as illustrative of the supposed general term comprised in the expression by "operation of law", and I feel having regard to the language used that the specific import of the two expressions remains unaffected by their connection with one another in r. 16. If it were permissible to obtain a clue to the intention of the legislature in the use of the expression by reference to the law of transfer, for r. 16 deals essentially with transfers of decrees and therefore the subject-matter thereof, it would be useful to refer to s. 2 (*d*) of the Transfer of Property Act. There the expression, "transfer by operation of law" is used in contra-distinction to the words "by, or in execution of, a decree or order of a Court of competent jurisdiction". The transfers "by operation of law" are obviously intended to be confined to testamentary and intestate succession, forfeiture, insolvency, and the like. It is true that the rule as to the exposition of one Act by the language of another might be properly applied to different statutes *in pari materia* though made at different times. But where, as here, the Acts deal with similar object, namely, transfer, although not for the identical purpose, I think it would not be improper to refer to the difference observed by the legislature in the use of similar expressions. It could also be supposed that the legislature was aware of the interpretation put on those words by the Courts and the Privy Council in *Abedoonissa Khatoon* v. *Ameeroonissa Khatoon*,[1] and from the fact that it retained the words in the enactment of 1908 it must be assumed that it has accepted and not overruled the judicial interpretation given to those words. I do not think

[1] (1876) L. R. 4 I. A. 66, s. c. 2 Cal. 327, P. C.

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therefore that it is possible to regard a decree, such as we have here, declaring the title of a party to a decree passed previously, as sufficient to effect a transfer by operation of law of the right to execute the decree within the meaning of r. 16 of O. XXI. I am inclined with respect to accept as correct the view which was expressed in the two cases referred to, namely, *Pandu* v. *Savla*[1] and *Prabashinee Debi* v. *Basiklal Banerji*.[2] I am also of the opinion that a decree declaring title to the money obtained under another decree does not *ipso facto* constitute an assignment, and that at best it creates a right to obtain an assignment of the decree for the purpose of realisation of the debt to which the title is conferred. Therefore I would hold that a person like the respondent, who upon our interpretation of his decree was entitled to obtain an assignment of a decree already obtained or the monies recoverable thereunder, is not a transferee by operation of law. Consequently it seems to me that the lower Court was wrong in holding that the respondent was a transferee by operation of law.

The alternative argument of the respondent is that if he were not a transferee by operation of law at least he is a transferee by assignment in writing. There I think he is on firmer ground. There is in this case a joint application by the holders of the decrees and the present applicant to the Court wherein it is unequivocally stated that the former have no objection to surrender all their rights to the claimant, the plaintiff in the case, and that the Court should confirm that arrangement by a decree declaring his title to the monies, claimable under the decrees. If such a writing were tendered and the Court's sanction obtained, it seems to me that it is difficult to resist the inference that in effect that writing is an assignment. There is no provision in law prescribing a particular form for such an assignment. The rule itself merely requires a written assignment and it does not specify the form which it should take. In view of the provisions of

[1] (1925) 27 Bom. L. R. 1109. [2] (1931) 59 Cal. 297.

that rule and its object, it seems that some written authority proceeding from the transferor of the decree is sufficient for the Court to take action on the application of the transferee. Therefore as it is possible to construe the agreement in writing which requests the Court to pass a decree in terms thereof, as an intention to convey and transfer the decrees, we are prepared to regard it as an assignment in writing for the purpose of r. 16. In that connection I would refer to the case of *Periakatha Nadar* v. *Mahalingam*.[1] With respect I agree with the following observations made therein (p. 545) :—

"Anything in writing which transfers a decree and clearly shows that the intention was to assign the decree is sufficient, and what is required is an assignment in substance which is in writing."

Consequently it is possible to hold that the respondent is the assignee in writing of the decrees in question and therefore entitled to apply in and proceed with execution. On that account the Court will have to conform to the form of procedure laid down by r. 16. The rule insists on the issue of notices to the transferor and the judgment-debtors. The latter are on the record, and are aware of the application, but no formal notice seems to have been given to the transferors the original decree-holders. That was the obvious result of the interpretation put by the lower Court upon the provisions of r. 16 of O. XXI. Now that we hold that that Court is wrong in that interpretation, we think this case should be sent down for conforming to the form prescribed by r. 16 before proceeding further with the application. In the meantime it will be necessary to continue the attachment.

In view of the above these appeals must be dismissed. Having regard to the fact that the appellants fail in substance, they must pay their own as well as the respondent's costs of these appeals.

SEN J. I agree.

Appeals dismissed.

Y. V. D.

[1] [1936] A. I. R. Mad. 543.