CIVIL RULE.

Before Mr. Justice Ghose and Mr. Justice Brett.

BHUGWAN CHUNDER KRITIRATNA

v.

CHUNDRA MALA GUPTA.*

1902
Jan. 14, 15.

Civil Procedure Code (Act XIV of 1882) ss. 295, 296—Execution of decree—Rateable division of proceeds of execution sale—Property attached in execution of decrees of several Courts—Attachment before judgment—Court of superior grade—Appeal—Revisional jurisdiction.

When a property has been sold in execution of decrees in a Munsiff's Court, and, prior to the realisation of assets by sale, a decree-holder in the Subordinate Judge's Court, who attached the same property before judgment, applies to the Subordinate Judge for the execution of his decree, the only Court which has jurisdiction to decide questions relating to the rateable distribution of the sale proceeds under s. 295 of the Civil Procedure Code, is the Court of the Subordinate Judge, and not that of the Munsiff.

(*Semble*) When the Munsiff has ordered a rateable distribution of the sale proceeds amongst the decree-holders in his Court, whether the Subordinate Judge has jurisdiction to set aside that order and to direct that the decree-holders in the Munsiff's Court should refund the sums drawn by them in excess of what was legitimately due to them.

THE decree-holders, Bhugwan Chunder Kritiratna and another, obtained this rule.

On the 24th August 1899 a property belonging to the judgment-debtor, Ambica Charan Gupta, was sold in the Court of the first Munsiff of Brahmanbaria in execution of a decree held by one Hari Mohan Dass. Previous to the realisation of the assets, other decree-holders, namely, one Raghunath Tewari and the petitioners in this rule, applied for rateable distribution of the sale proceeds amongst them. The Munsiff made a rateable distribution amongst the said decree-holders on the 5th January 1900, and thereupon the petitioners in this rule had paid to them by the Court the sum of Rs. 555 and odd annas out of the assets realised.

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One Uma Charun Gupta had brought in the Court of the Subordinate Judge of Tipperah a suit for account against the judgment-debtor, and in September 1896 certain properties of the judgment-debtor, including the aforesaid property, were attached before judgment at his instance. Uma Charan obtained a decree on the 23rd August 1899, and applied to the Subordinate Judge for execution of his decree on the 31st August 1899. Thereupon on the 9th September 1899 the Subordinate Judge directed that the Munsiff of Brahmanbaria should send up the record of the aforesaid execution case to his Court after confirmation of sale and should direct the decree-holders in the Munsiff's Court to appear before the Subordinate Judge for rateable distribution. But, in spite of this order, the Munsiff, through mistake as it appears, directed on the 5th January 1900 a rateable distribution amongst the decree-holders in his Court, as has already been stated, and then sent up the records of the case to the Subordinate Judge. It may be added that before the property was sold, Uma Charan had objected in the Munsiff's Court to the sale taking place, but his objection was overruled.

The Subordinate Judge then made a redistribution of the assets realised by sale amongst all the decree-holders, including Uma Charan, and directed that the petitioners in this rule should refund the sum of Rs. 293 and odd annas as drawn by them in excess of what was due to them. Against this order the petitioners Bhugwan Chunder Kritiratna and another moved the High Court and obtained this rule.

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Dr. Asutosh Mukerjee and *Babus Jnanendra Nath Bose* and *Gobinda Chandra Dey Roy*, for the petitioners.

Babu Baikanta Nath Das, for the opposite party.

Cur. adv. vult.

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GHOSE AND BRETT JJ. The subject-matter of this rule is an order of the Subordinate Judge of Tipperah, dated the 9th September 1899, calling for the record of a certain execution case from the file of the Munsiff of Brahmanbaria for the purpose of rateable distribution of the sale proceeds of a certain property, amongst certain decree-holders, one of the decree-holders being

a person, who had obtained a decree in his (the Subordinate Judge's) Court, as also a subsequent order of the 19th February 1900 of the same officer determining the question of rateable distribution and ordering that certain of the decree-holders in the Brahmanbaria Munsiff's Court, who had, under the orders of the Munsiff, dated the 5th January 1900, taken out certain sums in excess of the amounts properly due to them, should refund the excess amount.

It appears that in execution of a certain decree or decrees, in the Munsiff's Court of Brahmanbaria, certain property belonging to the judgment-debtor, Ambica Charan, was attached for sale. The sale took place on the 24th August 1899. But before this event happened the decree-holder in the Subordinate Judge's Court, who had got the same property attached before judgment, obtained his decree, and this was on the 23rd August 1899. And on the 31st idem he applied to the Subordinate Judge for execution of his decree. That officer thereupon, on the 9th September 1899, sent down an order to the Munsiff of Brahmanbaria calling for the record of the execution case pending on his file for the purpose, as we have already indicated, of the distribution of the proceeds of the sale already held on the 24th August, between the decree-holder in his (the Subordinate Judge's) Court and the other decree-holders in the Munsiff's Court. The Munsiff, however, apparently out of mistake, instead of complying with the order of the Subordinate Judge, as he ought to have done, on the 5th January 1900, made a rateable distribution between the decree-holders of his own Court. Subsequently the Munsiff sent the record to the Subordinate Judge, who, on the 19th February 1900, as already mentioned, determined the matter of distribution between the decree-holder in his own Court and the various decree-holders in the Munsiff's Court, and finding that some of the decree-holders had obtained more money than they were entitled to receive, directed them to refund the amounts which they had obtained in excess of their legitimate dues under his distribution.

We might here mention that, upon the sale taking place on the 24th August 1899, the monies were realized on various dates. The whole amount would seem to have been realized on

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the 6th September 1899, that is to say, after the application that was made by the decree-holder in the Subordinate Judge's Court for execution of his decree, which was, as already mentioned, on the 31st August 1899.

The learned Vakil for the petitioner, one of the decree-holders in the Munsiff's Court, who obtained this rule, has urged upon us that the Subordinate Judge had no authority to call for the record of the execution case in the Munsiff's Court for the purpose of distribution of the sale proceeds, and in the second place, he has contended that the Subordinate Judge's order of the 19th February 1900, distributing the sale proceeds amongst the various decree-holders, was also without authority, more particularly his order directing that some of the decree-holders in the Munsiff's Court should refund such sums as they had received in excess of their legitimate dues.

No question, we might here mention, has been raised as to the validity of the sale in the Munsiff's Court. The sale having taken place in that Court, it must be taken to be a perfectly good sale. The only question which we have to consider is as to the rateable distribution made by the Subordinate Judge, and the order that he passed calling upon certain decree-holders in the Munsiff's Court to refund monies.

Under s. 295 of the Code of Civil Procedure, "whenever assets are realized by sale or otherwise in execution of a decree, and more persons than one have, prior to the realization, applied to the Court by which such assets are held for execution of decrees for money against the same judgment-debtor, and have not obtained satisfaction thereof, the assets, after deducting the costs of the realization, shall be divided rateably among all such persons."

The decree-holder in the Subordinate Judge's Court is one of those persons, and he applied in proper time to the Subordinate Judge for obtaining a share of the money realized under the sale in the Munsiff's Court of Brahmanbaria.

Referring then to s. 285 of the Code, it will be found that "where property not in the custody of any Court has been attached in execution of decrees of more Courts than one, the Court which

shall receive or realize such property and shall determine any claim thereto and any objection to the attachment thereof, shall be the Court of highest grade, or where there is no difference in grade between such Courts, the Court under whose decree the property was first attached."

Now, although the attachment that was taken out by the decree-holder in the Subordinate Judge's Court was before judgment, still a decree having been subsequently obtained on the 23rd August 1899, the attachment that had already been put upon the property became operative, and upon such attachment being made operative, he stood in the same position in respect to the property attached as the decree-holders in the Munsiff's Court. That being so, the Subordinate Judge's Court was the only Court, having in view the provisions of the sections to which we have just referred, which could determine any claim to the assets realized by the sale in the Munsiff's Court. That is a view which we think is apparent on the face of s. 285 itself; and it seems to have been adopted in the case of *Badri Prasad* v. *Saran Lal* (1), where the learned Judges amongst other matters observed as follows:—"Where the Courts are of different grades, the one upon which this duty," that is to say, the duty of distribution under s. 295, "devolves is that of the highest grade; where they are of the same grade, that which first effectuated the attachment." And in another portion of the judgment they observed:—"It appears to us that, when several decrees of different Courts are out against a judgment-debtor, and his immoveable property has been attached in pursuance of them, the law contemplates, no matter whether such Courts be of the same or different grades, that *one* Court and *one* Court only shall have the power of deciding objections to the attachment; of determining claims made to the property; of ordering the sale thereof and receiving the proceeds, and of providing for their distribution under s. 295." That being so, we think that after the Subordinate Judge had called for (as he had full authority to do) the record of the execution case from the file of the Munsiff on the 9th September 1899, for the purpose of distribution of the sale proceeds, the Munsiff

(1) (1882) I. L. R. 4 All. 359.

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had no power to distribute the money amongst the decree-holders in his own Court. He ought to have at once sent up the record to the Court of the Subordinate Judge, for the purpose of a distribution being made by that officer in accordance with s. 295 of the Code. The Subordinate Judge, as we have already stated, upon receipt of the record from the Munsiff's Court, dealt with the matter of distribution, and made his order of the 19th February 1900. That is an order which was in perfect accordance with the provisions of ss. 295 and 285 of the Code of Civil Procedure, and no objection could be taken to it.

But then the question arises whether the Subordinate Judge had the authority to make the order that some of the decree-holders in the Munsiff's Court should refund the sums drawn by them in excess of what was legitimately due to them. It seems to us extremely doubtful whether he had such authority, because the Subordinate Judge was not then sitting in appeal against the order of the Munsiff, nor had he any revisional jurisdiction in respect of any order, which the Munsiff had made. However that may be, in order to remove any doubt or difficulty which may exist, we make the same order which the Munsiff, so soon as he discovered the mistake that he had made, ought to have made, and which the Subordinate Judge has made in this matter.

The rule will accordingly be discharged. We make no order as to costs.

Rule discharged.

M. N. R.