

CIVIL RULE.*Before Stephen and D. Chatterjee JJ.*

HARAI SAHA

v.

FAIZLUR RAHMAN*

1913

March 5.

Rateable Distribution—Deposit by Judgment-debtor—Civil Procedure Code (Act V of 1908) O. XXI, r. 89, and s. 73—Alteration in s. 73, effect of.

When money is paid into Court under O. XXI, r. 89 of the Civil Procedure Code, 1908, there can be no rateable distribution under s. 73 of the Code.

The scope of s. 73 of the new Code of Civil Procedure (Act V of 1908) is far wider than that of s. 295 of the old Code (Act XIV of 1882), yet the effect of the enactment in s. 310A of the old Code, which is reproduced in O. XXI, r. 89 of the new Code, remains unaltered.

RULE granted to the petitioners, Harai Saha and another, the decree-holders.

One Harai Saha and another obtained money decree against certain persons. In execution of that decree immoveable properties of the judgment-debtors were sold. Opposite parties Nos. 6 and 7, who obtained decrees in other suits against the said judgment-debtors, applied under s. 73 of the Code of Civil Procedure, 1908, for rateable distribution of the sale-proceeds. The judgment-debtors then made a deposit under O. XXI, r. 89, and got the sale set aside, after which the opposite parties Nos. 8 and 9 applied for rateable distribution, which was made by an order of the learned Munsif of Comilla, among the petitioners and

* Civil Rule, No. 6727 of 1912, against the order of Jogendra Chandra Dey, Munsif of Comilla, dated Dec. 23, 1912.

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all the other decree-holders. Against this order the petitioners moved the High Court and obtained this Rule.

Babu Harendra Narayan Mitter (with him *Babu Upendra Kumar Roy*), for the petitioners. Question is whether money deposited under section 310A of the old Code of Civil Procedure is assets within the meaning of section 295 of the Code. I submit it is not. Farther, the order "for payment to the decree-holder" in section 310A means that the decree-holder, in execution of whose decree the money was realized, is the person solely entitled to the money paid into Court: see *Roshun Lall v. Ram Lall Mullick* (1). That being so, the learned Munsif acted without jurisdiction in directing the rateable distribution in the way he did.

Babu Jogesh Chandra Roy (with him *Babu Jatindra Mohan Ghose*), for the opposite party. The words in section 295 of the old Code are "assets are realized by sale or otherwise, etc.," and the words in section 93 of the new Code are "where assets are held by a Court." The effect of the change in the section is that money realized in execution and money deposited under section 310A are assets held by the Court. That being so, all the decree-holders would be entitled to rateable distribution.

Babu Harendra Narayan Mitter, in reply. Under section 310A of the old Code the money is deposited for payment to the decree-holder: *Bihari Lal Paul v. Gopal Lal Seal* (2). Therefore, the petitioners are only entitled to get the money deposited. The amount so deposited would be assets realized in the course of execution: *Pita v. Chuni Lal Harakchand* (3). Although the word "assets" might include money

(1) (1903) I. L. R. 30 Calc. 262.

(2) (1897) 1 C. W. N. 695.

(3) (1906) I. L. R. 31 Bom. 207.

deposited in Court as in the present case, but reading O. XXI, r. 89, it is clear that the said money can not be taken by any other decree-holder. The change made in section 73 was never intended to override any specific provision of law.

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Civ. adv. vult.

STEPHEN AND CHATTERJEE JJ. The petitioners before us obtained a money decree against certain persons, and executed it by a sale of immoveable property belonging to them. Two decree-holders in other suits, opposite parties Nos. 6 and 7, then applied under section 73 of the Code for rateable distribution of the money realized by the sale in the petitioner's suit; the judgment-debtor proceeded to deposit in Court under O. XXI, r. 89, money representing the decretal amount, and got the sale set aside, after which opposite parties Nos. 8 and 9 applied for rateable distribution, which was made among the petitioners and all the other decree-holders. A Rule has been granted calling on the decree-holders other than the petitioners to show cause why the order made under section 73 should not be set aside on the ground that the Court had no power to order rateable distribution.

Under the old Code it was held by this Court in *Roshun Lall v. Ram Lall Mullick* (1) that when money was paid into Court under section 310A, there could be no rateable distribution under section 295, for the terms of the former section were too precise to admit of the application of the latter. This followed the decisions in *Hari Sundari Dasya v. Shashi Bala Dasya* (2) and *Bihari Lal Paul v. Gopal Lal Seal* (3) where, as in this case, application for rateable distribution

(1) (1903) I. L. R. 30 Calc. 262. (2) (1896) 1 C. W. N 195.

(3) (1897) 1 C. W. N. 695.

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was made before the payment into Court under section 310A, now represented by O. XXI, r. 89. This case is therefore covered by authority, unless the alterations effected in the enactments in question have changed the law. Section 310A of the old Code is practically reproduced in O. XXI, r. 89; but section 295 is replaced by section 73. The result of this is that whereas the subject-matter of rateable distribution used to be "assets realised by sale or otherwise in execution of a decree," it is now "assets held by the Court." It is obvious that the scope of the new section is thus far wider than that of the old one; but this does not alter the effect of the enactment in section 310A which is reproduced in O. XXI, r. 89.

The result is that this Rule must be made absolute and the order set aside. The petitioner is entitled to his costs.

S. C. G.

Rule absolute.