

Tulsabai and ors. Vs. Mast Ram

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Court : Allahabad

Decided On : Apr-10-1963

Reported in : AIR1964All373

Judge : R.S. Pathak, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 21, Rule 2

Appeal No. : Ex. Second Appeal No. 2435 of 1958

Appellant : Tulsabai and ors.

Respondent : Mast Ram

Advocate for Def. : B.N. Asthana, Adv.

Advocate for Pet/Ap. : V.K.S. Chaudhary, Adv.

Disposition : Appeal dismissed

Judgement :

R.S. Pathak, J.

1. This is a decree-holder's appeal arising out of execution proceedings.
2. Jagannath Singh and others, as heirs of Smt. Dulari, were Thekedars jointly with Mastram of certain plots belonging to the zamindars Mahesh Prasad, Sheo

Prasad and others.

3. The zamindar lessors obtained a decree for arrears of lease money relating to a period of three years against these Thekedars.

4. The Thekedari profits for the years 1345F. to 1347F. were collected by Mast Ram alone. The co-sharers, Jagannath and others sued for their share of the profits and obtained a decree against him on September 18, 1942. Mast Ram appealed against the decree and the appellate court passed a decree, one of the terms being that any sums 'which the appellant has already paid or may in future pay towards the lessor's decree for the lease money of the years will be taken into account with the respondent's execution of the present decree'. This decree was put into execution by Jagannath and others, whose legal representatives are included among the present appellants. The execution was resisted by Mast Ram on the ground that besides paying off his own share of liability under the lessor's decree, he had also paid sums totalling about Rs. 2,000/- on account of the appellant's share of liability under that decree, and that after adjusting these amounts against the appellant's decree it would be found that the entire decree had been satisfied.

5. The executing court rejected the objection filed by Mast Ram, but an appeal preferred by him found favour with the learned Civil Judge, Banda who allowed his objection and directed the execution to be struck off as fully satisfied. The Civil Judge has held that the payments by Mast Ram had been proved to have been made and that it was not necessary that these payments should have been certified under Order 21 Rule 2 C. P. C.

6. The appellants do not challenge the finding that Mast Ram paid the amounts alleged by him to the zamindar lessors. This is a finding of fact and indeed is not amenable to challenge. They contend, however, that without these payments having been certified under Order 21 Rule 2 it was not open to the executing court to take them into consideration when determining whether the decree had been satisfied or not. It is urged that the provisions of Sub-rule (3) of Order 21 Rule 2 prohibit a Court from recognizing a payment or an adjustment which has not been certified or recorded under the preceding provisions of Order 21 Rule 2. It is not possible to accept this contention.

Order 21 Rule 2 (1) provides :

'Where any money payable under a decree of any kind is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.'

7. It is apparent that the rule will apply where money payable under a decree is paid out of Court or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder. The judgment-debtor Mast Ram does not allege that he had paid any money due under the decree in execution to the appellants. His case is that by making payment to the Zamindar lessors towards the liability of the appellants under the lessors' decree he was entitled to adjust the amount of that payment towards his liability under the appellants' decree. Now the adjustment contemplated by Order 21 Rule 2(1), must be an adjustment to the satisfaction of the decree-holder. If the decree-holder agrees to such adjustment, then alone, in my judgment, can the provisions of Order 21 Rule 2 (1) be called intoplay. In the present case, Mast Ram bases his right to the adjustment not by reference to any agreement between him and the appellants but solely in exercise of the right conferred upon him by the terms of the decree under execution. It follows from the view which I have taken that Sub-rule (3) of Order 21 Rule 2 does not apply where the decree which is being executed itself directs that certain payments made by the judgment-debtor shall be taken into account during execution.

8. In *A. P. Bagchi v. Mrs. F. Morgan* : AIR1935 All513 Niamat Ullah, J. expressed the view that Order 21, Rule 2 applied only to cases where the payment or adjustment had been made upon a mutual understanding between the decree-holder and the judgment-debtor. Similarly in *Mahiganj Loan Office Ltd. v. Behari Lal Chaki* : AIR1937 Cal211 a Bench of the Calcutta High Court interpreted the provisions of Order 21, Rule 2 to refer to an adjustment entered into by mutual consent between the decree-holder and the judgment-debtor.

9. Reliance was placed for the appellants on Mahadeo Prasad v. Mt. Hamidan AIR 1923 All 271(1) for the proposition that a payment directed to be made to a third person under the decree fell within the scope of Order 21, Rule 2. In that case, however, the question whether there could be any payment or adjustment for the purpose of Order 21, Rule 2 except by an agreement between the parties was not considered. The only question was whether a payment made to a third person and not to the decree-holder required certification under Order 21, Rule 2. That decision, therefore, is of no assistance to the appellants. Reference was also made to Akbar AH Khan v. Dr. Ishwar Saran : AIR1957 All622 , but that was not a case where the payment or adjustment in question was consequent to the decree under execution and not by agreement between the parties.

10. The next contention for the appellants is that when the Court passed the decree under execution and directed that payments made by Mast Ram would be taken into account when the decree was executed it must be taken to have implied that these payments would be considered only upon compliance with Order 21, Rule 2. No such implication can be read into the terms of the decree. The further contention that the decree did not direct that payments by Mast Ram on behalf of the present appellants should be taken into account cannot also be sustained, because that is truly what the decree directed.

11. All the contentions of the appellants having failed, this appeal must be and is dismissed with costs.

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