

Nagesar Ram Vs. Rajnet Ram

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Court : Allahabad

Decided On : Feb-15-1936

Reported in : AIR1936All639

Appellant : Nagesar Ram

Respondent : Rajnet Ram

Judgement :

1. This is a judgment-debtor's appeal arising out of execution proceedings. The opposite party holds a simple money decree against Nagesar Ram judgment-debtor, and has put that decree into execution. The appellant holds a mortgage decree against the opposite party. The only question for determination in this case is whether a mortgage decree can be set off against a simple money decree obtained by the opposite party against the appellant. Rule 18, Order 21, Civil P.C., enacts that where application is made to a Court for the execution of cross-decrees in separate suits for the payment of two sums of money passed between the same parties and capable of execution at the same time by such Court, then (a) if the two sums are equal, satisfaction shall be entered upon both decrees, and (b) if the two sums are unequal execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum, shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum. One of the essential conditions is mentioned in Clause (3), Sub-clause (a), which runs as follows:

The decree-holder In one of the suits in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both suits.

2. It will be seen that the rule relates to decrees for payment of money. As we have already pointed out, in the case before us, we have a decree for payment of money on the one side and a decree obtained on the basis of a mortgage-deed for sale on the other. It cannot be said that a decree for sale obtained on foot of a mortgage is a decree for payment of money. Rule 20, Order 21, enacts that the provisions contained in Rs. 18 and 19, shall apply to decrees for sale in enforcement of a mortgage or charge. Learned Counsel for the appellant has contended before us that in view of the provisions of Rule 20, Order 21, Civil P.C., his case comes within the definition of a decree for money and he is entitled to set it off against the decree of the opposite party. We find ourselves unable to agree with this contention. It appears to us that all that Rule 20 lays down is that the provisions of Rs. 18 and 19 shall apply to cross-mortgage decrees, i.e., if two contending parties hold mortgage decrees against each other, then they will be able to set off the decrees one against the other. We see nothing in the provisions of Rule 20, which will warrant us in holding that a decree obtained on the foot of a mortgage becomes a decree for payment of money and therefore it can be set off against a simple money decree held by the opposite party.

3. Learned Counsel for the appellant cited before us several cases, but we will make a reference to some of them. The first case on which he relied is Nagarmal v. Ram Chand (1911) 83 All 240. 'We have read the judgment passed in this case and we do not think that the Court in that case laid down that a mortgage decree is a decree for money and can be set off against simple money decree. The head note of that case is somewhat misleading. The learned Judges who decided the case never laid down a definite proposition as mentioned in the head-note. It appears from a perusal of that judgment that it was argued before their Lordships that a decree for sale for enforcement of a charge against immoveable property could be set off against a simple money decree, and reliance was placed on the provisions of Rule 20, Order 21, Civil P.C. The question was not decided. Their Lordships set down the contentions raised on both sides and did not decide the matter one way or the other, and so it cannot be said that this case is any authority

for the proposition put forward by learned Counsel for the appellant before us. The other case relied upon is *Sobha Ram Gopal Rai v. Tara Chand* 1929 All 502. In our opinion, this is no authority for the contention put forward before us. All that was decided in that case was that as there were applications for execution of both the decrees, Order 21, Rule 18, applied and the Court could set off smaller amount due from B against the larger amount due to him from A although A had already secured attachment of B's decree against himself. There is nothing in this judgment to show that the learned Judges were called upon to decide the question as to whether or not a decree obtained on the basis of a simple mortgage deed for sale would be set off against a simple money decree. We may point out that the decisions of the Madras High Court on this question are certainly in favour of the contention which has been advanced before us by learned Counsel for the appellant. We may refer to the latest decision of the Madras High Court in *Venkata Reddi v. Dorasami Pillai* 1933 Mad 63. In that case it was decided by the learned Judges that a mortgage decree could be set off against a simple money decree. We respectfully dissent from the view taken by the learned Judges of the Madras High Court on the point in question.

4. In this connection we may refer to a case of our own Court, *Sheo Shanker Kaulapuri v. Chunni Lal* 1916 14 ALJ 776. In that case one of the contending parties had a simple money decree and he applied for its execution, and on the other side the opposite party had put in an application for execution of a mortgage decree for foreclosure. The learned Judge who decided the case held that under Order 21, Rule 18, Civil P.C., there could be no set off inasmuch as the applicants filled distinct characters in the two cases. At p. 781 the learned Judge made the following observations:

Prior to the passing of Act 5 of 1908, (the present Code of Civil Procedure), it had been held that a decree for sale is not a decree for payment of money within the meaning of Section 230 and Section 246, Civil P.C. This point has been cleared up by R 20 of this order. The provisions of Rs. 18 and 19 apply now to decrees for sale as well. Rule 20, however, does nothing more than make the provisions contained in Rs. 18 and 19 applicable to decrees for sale. The two decrees proposed to be set off against each other must come within the provisions of these

rules before they can be set off.

5. In our opinion, if we may do so with respect, this is the correct view to take. If the legislature had intended that the provisions of Rule 18, should govern cases in which there is a mortgage decree on the one side and a decree for payment of money on the other hand, that intention would have been made clear by stating in Rule 18 that the provisions of that rule will be applicable to cases of this description. Learned Counsel for the appellant contended before us that Rule 20, Order 21, Civil P.C., supported his contention. We are unable to agree with this argument. In our opinion, the provisions of Rule 20, Order 21, are opposed to his contention. It will be noticed that the heading given to Rule 20, Order 21, is:

CROSS-DECREES AND CROSS-CLAIMS IN MORTGAGE SUITS.

Rule 20, Order 21, enacts:

The provision contained in Rs. 18 and 19 shall apply to decrees for sale in enforcement of a mortgage or charge.

6. We may point out that this rule is new and was added in the Code of Civil Procedure for the first time when the new Code of 1908 came into force. It appears to us that the reason for enacting this rule was that legislature considered it desirable to make provisions under which one mortgage decree or a decree for the enforcement of a charge could be set off against another decree of the same description.

7. So Rule 20 was enacted which made the provisions of Rules 18 and 19, which related to a claim arising out of 'decrees for payment of money,' applicable to decrees for sale in enforcement of a mortgage or charge. If a mortgage decree can be set off against a decree for payment of money under the provisions of Rule 18, Order 21, then it is not easy to understand the reasons for enacting Rule 20, Order 21, Civil P.C. It has also to be 'remembered in every decree for payment of money, there is a personal liability, whereas in every decree for sale in enforcement of a mortgage or charge, there may be no personal liability. In

enforcing a claim on the basis of a decree for payment of money, the decree-holder is entitled to ask for the arrest of his judgment-debtor. On the other hand, in a mortgage decree, the mortgagor is not personally directed to pay any sum of money, but is only given an option to pay if he wishes to save the property in which he is interested. The decree-holders, in such cases do not fill the same character and, therefore, Rule 18 can have no application. The interpretation which we place on Rule 20 is that it permits one mortgage decree to be set off against another mortgage decree; but it has no application to a case where one party has a decree for payment of money and the other a decree for sale or for enforcement of a charge.

8. We are further of opinion that in order to attract the provisions of Rule 18, Order 21, it is necessary that the decree sought to be set off against each other must be decrees for payment of money. This being our view, we are of opinion, that the order passed by the Court below, is correct. We accordingly dismiss the appeal with costs.