

Chhattar Singh Vs. Amir Singh

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Court : Allahabad

Decided On : Jan-21-1916

Reported in : AIR1916All239; 32Ind.Cas.590

Judge : Henry Richards, C.J. and ;Rafique, J.

Appellant : Chhattar Singh

Respondent : Amir Singh

Judgement :

1. This appeal arises out of an application made by a decree-holder to execute a decree. In the application for execution the decree-holder stated that the decree was payable by instalments and the first four instalments had been paid but default had been made in the fifth instalment. He accordingly asked for execution of the decree in respect of the balance still remaining due. The decree was an instalment decree but provided that if default was made in the payment of the instalments, the full amount should become due. The judgment-debtor opposed the application on the ground that the application for execution was barred by time. He denied that payments had been made of any instalments. The Court of first instance after setting forth the facts states as follows: The judgment-debtor contests that the application is time-barred inasmuch as under the present Act the Court cannot recognise any uncertified payments. The decree-holder on the other hand says that the terms of the decree are not imperative and that the decree would be within time assuming the payments referred to were not recognised.' The

Court accepted the contention of the decree-holder and disallowed the objection. On first appeal to the District Judge the decision of the Court of first instance was upheld. On second appeal to this Court a learned Judge reversed the decision of the lower Courts and dismissed the application as barred by time.

2. The first question for consideration is whether on the assumption that no payments were ever made, the decree-holder is entitled to have execution for the remaining instalments. If the first four instalments had been made, it is quite clear that the application for execution in respect of the remaining instalments would be well within time. The contention, however, of the judgment-debtor is that assuming default was made in respect of the first instalment, the full amount of the decree became payable and that under the provisions of Article 182 (clause 7) the application is barred. The decree-holder on the other hand contends that he was entitled, if he so pleased, to waive his claim to the earlier instalments and that he was entitled to get execution in respect of the remaining instalments. This was his contention in the Court of first instance, which was accepted by the Munsif. It seems to us that this contention is not sound. Undoubtedly (on the face of the decree) it was directed that payment of the full amount should be made when default was made in the payment of any instalment. Therefore, under Clause 7 of Article 182 time began to run from the date when the first instalment became due (we are dealing now with the case upon the assumption that default was made on that date).

3. It is next contended that the decree-holder ought to have been allowed to go into evidence to show that the first four instalments had been paid out of Court. He says that he had his witnesses ready which could and would have been produced if the Munsif had not expressed an opinion that this was unnecessary and that the judgment-debtor's objection was bad for other reasons. It is quite possible that the witnesses were present and that the decree-holder might have given evidence as to the payments of the first four instalments. There is, however, nothing on the record to show that the witnesses were present in Court. However this may be, the judgment-debtor's objection has still to be considered. He relies on the provisions of Order XXI, Rule 2, which is as follows: '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' Clause (3) is as follows: 'A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognized by any Court executing the decree.' The judgment-debtor contends that even if the witnesses were present in Court ready to give evidence, the Court could not hear them inasmuch as the only way in which a payment towards the decree could have been proved was by its being 'certified and recorded' according to the rule. As against this contention the decree-holder says that there is no period prescribed by law within which he could certify the payment made on foot of the decree out of Court, and that his application for execution in which he says that payments had been made should have been treated as certifying.' The appellant relies upon the case of *Lakhi Narain Ganguli v. Felamani Dasi* 27 Ind. Cas. 11; 20 C.L.J. 131 and upon the case of *Rajam Aiyar v. Anantharatnam Aiyar* 31 Ind. Cas. 318; 29 M.L.J. 669; 18 M.L.T. 475; (1916) M.W.N. 127. In the first of these cases the learned Judges say. 'The decree was obtained as long ago as the 5th April 1909 and the application for execution was made on the 17th December 1913. Between these two dates, on three occasions, as found by the learned Judge of the Court below, the judgment-debtor made part payments to the decree-holders, namely, on the 6th March 1911, 18th March 1912, and the 21st February 1913. Receipt of each of these payments was endorsed on the back of an office copy of the decree and thereupon the decree-holders applied on the 17th December 1913 for execution for the balance remaining due under the decree.'

4. Later on the learned Judges say: There is no definition of what certifying or recording is; but it is quite clear that the practice in this country is that the decree-holder certifies the part payments in the application for execution and thereupon the Court having recorded the whole of the petition directs execution to issue for the balance.'

5. We are not prepared to accept this as the practice in these Provinces. In our opinion the practice is that when payments are made in Court or out of Court, there is a record on the execution file showing that the payments have been

certified and recorded. It would obviously not be within the spirit of Order XXI, Rule 2, that the certifying of the payments on foot of a decree should rest entirely with the decree-holder. He might often be tempted to record on his private copy of the decree a part payment which had in fact never been made. We may assume for the purposes of argument that a decree-holder may at any time come in with an application to the Court that he should be at liberty to certify a payment and have it recorded, but in the present case there was no such application made by the decree-holder. He merely came in with an application for execution alleging that certain payments had been made. As to what has been the practice of 'certifying' payments, we may refer to the case of *Gokul Chand v. Bhika* 23 Ind. Cas. 753; 12 A.L.J. 387 and also to the case of *Bhajan Lal v. Chede Lal* 24 Ind. Cas. 215; 12 A.L.J. 825. In our opinion no payment on foot of the decree having been 'certified and recorded' within the meaning of Order XXI, Rule 2, the Court was bound to assume that no such payments had been made and it was not entitled to go into evidence as to payment on an application for execution of the decree. In this view the decree of the learned Judge of this Court was correct and ought to be affirmed. We dismiss the appeal with costs.