

Dal Chand Vs. Lala Mool Chand and ors.

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Court : Allahabad

Decided On : Apr-11-1934

Reported in : AIR1934All896; 150Ind.Cas.770

Appellant : Dal Chand

Respondent : Lala Mool Chand and ors.

Judgement :

1. This appeal arises out of certain execution proceedings. There were three decrees against the same judgment-debtors, Jagannath Prasad and others. One had been obtained by Durga Prasad from the Court of the Subordinate Judge and the other two by Mewa Ram and Dal Chand separately from the Court of the Munsif. Durga Prasad executed his decree and attached certain properties and the execution of his decree was transferred to the Collector by the Subordinate Judge. Mewa Ram acted independently. He executed his decree, got the same property attached and got execution of his own decree transferred to the Collector. Both the decrees were therefore in execution before the Collector. Dal Chand did not attach any property separately nor did he apply to the Court of the Subordinate Judge for a rateable distribution. He applied only to the Court of the Munsif in Mewa Ram's case for a rateable distribution. An intimation of his application was sent to the sale officer. Thus the sale officer had the claims of all the three decree-holders in his consideration. Before any auction sale could be held the judgment-debtors privately transferred to the present plaintiff Mool Chand part of the property on 3rd January 1928, at a time when the attachments of Durga Prasad and Mewa Ram

were subsisting and Dal Chand's application for rateable distribution also was pending. The Collector sold the property in execution of Durga Prasad's decree and even after satisfying the amount due to him there was a surplus left which was sent to the civil Court. Mewa Ram made a statement that he had been paid out of Court and would not proceed with his execution. Upon this a dispute arose between Mool Chand, the private transferee, and Dal Chand, the third decree-holder, as to who was entitled to the surplus amount which had been left over after the satisfaction of Durga Prasad's decree.

2. The present plaintiff, Mool Chand, brought the suit for a declaration that he was entitled to this amount inasmuch as Mewa Ram's attachment no longer subsisted. The defendant, Dal Chand, defended the claim on the ground that the benefit of the attachment of Mewa Ram enured to him and the private sale to the plaintiff was subject to his rights. The first Court decreed the suit but the lower appellate Court dismissed it. On appeal, a learned Judge of this Court has restored the decree of the first Court on the strength of the view expressed in three cases, viz., *Mina Kumari Bibi v. Bijoy Singh Dudhuria* 1916 P.C. 238, *Annamalai Chettiar v. Palamalai Pillai* 1918 Mad. 127 and *Bhora Bhupal v. Kundan Lal* 1921 All. 45. It seems to us that the present case is clearly distinguishable from all these three cases. The point which we have to consider in the present case is whether Dal Chand who had applied for rateable distribution in the execution case of Mewa Ram who had independently of Durga Prasad attached the same property, is not entitled to the benefit of the attachment. If Mewa Ram had not separately attached the property the case would have been similar to those referred to above.

3. In *Mina Kumari Bibi v. Bijoy Singh Dudhuria* 1916 P.C. 238 the defendant-respondent was a transferee of two decrees but he had attached the property in execution of one of the decrees only and by a subsequent order the sale of the attached property was indefinitely postponed until the execution application was dismissed. Before he could attach again, the judgment-debtor conveyed the property privately. Their Lordships of the Privy Council laid down that in the first place there were no assets held by the Court at all which the applicant for rateable distribution could claim. In the second place the attachment was only one attachment, namely, that in the first execution case and all that could be done was

to employ that attachment for the purpose of impugning the private alienation. But that would not help the judgment debtor in placing himself in a better position than the decree-holder who had attached the property earlier. If that attachment failed, his right also disappeared. The same view was expressed in the other two cases in none of which there was any second and independent attachment. In the present case Mewa Ram was entitled to attach the same property over again in execution of his own decree and the, execution of the Munsif's Court's decree was rightly transferred to the Collector. It therefore follows that the property was under attachment under both the decrees and not only under the decree of Durga Prasad. The sale officer could not sell the property to satisfy Durga Prasad's decree alone and release the judgment-debtor from all liability to pay Mewa Ram's decree.

4. The learned advocate for the respondents relies on the provisions of Section 63, Civil P.C. under which if property is under attachment in execution of decrees of more Courts than one the Court of the higher grade is to receive the property and determine all claims. This however does not mean that the attachment by the Court of the lower grade is a nullity. If any surplus was left after the satisfaction of Durga Prasad's decree it must be held that that surplus was subject to the attachment of Mewa Ram's decree. No private transfer of the property or of the surplus which was its equivalent could in any way affect the rights of Mewa Ram. It is therefore perfectly clear that if Mewa Ram had persisted in his execution and laid claim to the surplus amount left over, his application could not have been successfully resisted. Now under Section 64, Civil P.C., a person who applies for rateable distribution is placed on the same footing so far as the attachment goes as the attaching decree-holder. If however the attachment were to cease, the position of the person who had applied merely for rateable distribution might become precarious and he might be unable to proceed further to realise the amount. But this Court has amended Rule 55 of Order 21, in order to make it perfectly clear that even if the attaching decree-holder is satisfied or withdraws his claim, that would not affect the rights of those who had already applied for rateable distribution. Under that rule the amount decreed is deemed to include the amount of any decree passed against the judgment-debtor, notice of which had been sent to the sale officer. It is an admitted fact that in this case notice of the claim of Dal

Chand who had applied for rateable distribution had in fact been sent to the sale officer. It is therefore quite clear that Dal Chand's rights could not be prejudiced by the mere fact that subsequently Mewa Ram chose not to press his application and whether rightly or in collusion with the judgment-debtor stated, that he, had been paid out of Court.

5. In this view of the matter the plaintiff Mool Chand, who was private transferee at a time when the attachment of the property by Mewa was subsisting, cannot claims of the defendant who had previous to his private transfer applied for rateable distribution and thereby placed himself on the same footing as the attaching decree-holder, Mewa Ram.

6. We accordingly allow this appeal and setting aside the decree of the learned Judge of this Court, restore that of the lower appellate Court with costs in all Courts.

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