

Prem Vs. Muhammad Habibullah

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Court : Allahabad

Decided On : Jun-05-1914

Reported in : AIR1914All284; 24Ind.Cas.795

Judge : Chamier and ;Rafique, JJ.

Appellant : Prem

Respondent : Muhammad Habibullah

Judgement :

1. The facts which have given rise to this appeal are as follows :

Paras Ram, Khiali, and Jawahir obtained a decree against Habibullah, the respondent in the present case, on the 12th of October 1904. (sic) Lal, the father of the appellant, obtained a decree against Paras Ram and Khiali on the 21st of November 1906. The decree against Habibullah was a decree for costs and the decree of Panna Lal was a simple money decree. On the 7th of February 1903, Panna Lal applied for attachment of the decree dated October the 12th, 1904. This application was allowed under Section 273 of Act XIV of 1832 and prohibitory orders were issued to both parties to the decree of 12th October 1904. On the 2nd of April 1903 the Court, which had passed the decree in favour of Parma Lal, directed him to execute the decree which he had attached and consigned the execution case to the records. Panna Lal obtained a transfer certificate to the Court of Aligarh. In July 1908 he made an application for execution of the decree

of 12th October 1904 and Habibullah, the judgment-debtor, filed objections. Both the application and the objections were struck off on the 29th of April 1909 for default. Subsequently, several applications were made by Panna Lal for execution of the decree against Habibullah, but they were struck off for default. On the 6th of January 1913 Habibullah is said to have paid a sum of Rs. 1,595-13-6 to Jawahir on account of the decree of 12th October 1904, and Jawahir certified the payment on the 13th of January 1913. On the 9th of January 1913 Prem, the minor son of Panna Lal, applied for the execution of the decree of 12th October '1904. Habibullah filed objections with one of which we are concerned in this appeal. He said that the payment made by him to Jawahir was a valid payment inasmuch as no attachment of the decree of 12th October 1904 was subsisting at the time. In support of his contention he relied on the provisions of Order XXI, Rule 57, Civil Procedure Code. The Court of first instance accepted Habibullah's objection and rejected the application of Prem. It is contended before us that the provisions of Order XXI, Rule 57, are inapplicable to the present case. We think that the contention is well founded. The dismissal of the application of Panna Lal which related to the execution of the decree of 12th October 1904, could not have the effect of withdrawing or cancelling the attachment, which was made in execution of the decree of 21st November 1908. The payment made by Habibullah to one of the original decree-holders after and during the subsistence of the order made under Section 273 of old Code cannot be held to be valid. This view is borne out by the case of Gopal Nanashet v. Joharimal and Dada Balshet v. Joharimal 16 B. 522. The appeal, therefore, succeeds. We set aside the order of the lower Court and direct that the other objections of Habibullah be disposed of according to law. Costs will abide the event.