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Court : Kolkata

Decided On : Jun-20-1930

Reported in : AIR1932Cal313,137Ind.Cas.294

Judge : Mukerji and ;Mitter, JJ.

Appellant : Rajendra Kumar and ors.

Respondent : Rajendra Nath and ors.

Judgement :

1. This appeal has been preferred by certain decree-holders from an order passed by the Subordinate Judge of Khulna on 6th March 1929 ordering refund to the respondents of a sum of Rs. 1,200. The order came to be passed under the following circumstances: The appellants before us were the plaintiffs in, a suit which they had instituted against a very large number of persons, about 516 in all, as defendants for recovery of khas possession of certain lands. The trial. Court decreed the suit with costs against all the defendants. Out of these defendants 12 persons then preferred an appeal to this Court. Of them one subsequently withdrew from the appeal with the result that he was put into the category of respondents in that appeal. The other 11 respondents were defendants 18, 57, 93, 97, 98, 171, 208, 225, 34, 112 and 117. The respondent in the appeal before us was defendant 57 in the suit and one of the appellants in the aforesaid appeal. During the pendency of the appeal, these appellants made an application for stay of delivery of possession to the decree-holders, and upon certain orders passed

by this Court in the appeal aforesaid, the matter was referred to the trial Court for consideration. Eventually the trial Court on 3rd April 1925 made an order directing the judgment-debtors who had preferred the aforesaid appeal to deposit in Court a sum of Rs. 1,200 out of the costs allowed in the decree, the understanding being that on the said amount of costs being deposited there would be a stay of the proceedings relating to delivery of possession. Whether the proceedings relating to delivery of possession were in fact stayed or not, in consequence of a receiver having been appointed, is a matter with which we are not concerned in the present appeal.

2. It is sufficient to state that in pursuance of the order dated 3rd April 1925, the respondent, that is to say, defendant 57 in the suit, put in a sum of Rs. 1,200 in Court as deposit. From certain petitions that were filed it is quite clear that this amount was put in by the said respondent not merely on his own behalf but also on behalf of other persons who were co-appellants in the appeal which had been filed in this Court and who were also interested in the stay of delivery of possession. The chalan as regards this deposit which is on the record however shows that it was the respondent who alone put in the money. While the appeal was pending, after certain interlocutory orders were passed by the Court, the decree-holders eventually on 21st November 1926, obtained from the Court a pay order for Rs. 1,200 in realization of their decree for costs--and it may be taken for our present purpose--the costs to be realised from all the defendants in the suit. The appeal before this Court was thereafter heard and decided on 7th April 1927 with the result that in so far as the appellants therein were concerned it was allowed and the decree which the lower Court had passed as against the said appellants was discharged and certain other orders were passed as regards the costs of the appeal and so forth. On 11th September 1928 the respondent applied to the Court of the Subordinate Judge for refund with interest of the amount of Rs. 1,200 which had been deposited under orders of the Subordinate Judge dated 3rd April 1925. It was stated in that application that he had deposited the amount after borrowing the same from certain other persons and that in view of the fact that the decree of the Court of first instance was set aside he was entitled to the refund of the amount together with interest. It is this application of the respondent on which the Subordinate Judge on 6th March 1929 made the order from which the present

appeal has been preferred. The Subordinate Judge, as already stated, allowed the application of the respondent and ordered the decree holders to refund to him the sum of Rs. 1,200 within seven days, failing which he ordered execution to proceed in respect of the amount, In the appeal which the decree-holders have preferred from this order two points have been urged on their behalf.

3. It has been stated in the first place that the amount of Rs. 1,200 which was in deposit in Court was realized by the decree-holders in execution of their decree for costs as against all the judgment-debtors and that therefore in asking for a refund the respondent is not entitled to ask for anything beyond what would be his share of the costs under the decree proportionate to his interest in the property which formed the subject-matter of the suit.

4. The second contention is that although the amount was put in by the respondent himself, as would appear from the chalan, he did so if not on behalf of all the judgment-debtors in the case, at least on behalf of himself and the other judgment-debtors who had preferred the appeal to this Court; and if that view be taken of the proceedings that were then had, then the respondent alone is not entitled to make an application for refund of the entire amount of Rs. 1,200.

5. Now, so far as the first of these two contentions is concerned, it may be stated at once that the money which the decree-holders took in part satisfaction of their decree for costs as against all the judgment-debtors was the money which had been deposited not by all of them but by the respondent for himself and on behalf of his co-appellants in that appeal. The fact that it was taken by the decree-holders in part satisfaction of their decree for costs as against all the judgment-debtors, need not be construed as meaning that they were executing their decree for costs as against all the judgment-debtors. It is quite clear that the decree was a joint and several one and that it was competent for the decree-holders to realize not only this sum of Rs. 1,200 which had been deposited as aforesaid but also the entire amount of the decretal costs from any one of the judgment-[debtors and, for the matter of that, from the respondent alone. It is clear therefore that the action of the decree-holders in taking that money out of Court cannot prejudice the respondent as showing that the decree-holders were treating the money as belonging not to

him and his co-appellants but to the entire body of the judgment-debtors. No question of proportionate refund can, in our opinion, arise in circumstances such as these. It is quite true that if an order For refund is made at the present stage, it may be that the decree-holders will be without the remedy in the matter of the realization of this sum from the other judgment-debtors; but that is no ground for supporting the argument that although the respondent deposited the money for himself and on behalf of his co-appellants only and that money was utilized for satisfaction of the decree for which he and his co-appellants and, for the matter of that, he alone was responsible, and when the decree-holders have got the amount, the respondent should not be entitled to a refund of it when the decree that was against him has already been reversed by this Court.

6. As regards the second contention, it is true that if the money belonged to the respondent and his co-appellants in the appeal, he alone would not be entitled to the entire sum of money; but then this is a matter which does not affect the appellants. It is a matter entirely between the respondent and those who are co-appellants with him in the appeal to the High Court. So long as there is nothing to show that the co-appellants of the respondent are objecting to the withdrawal of the amount by the respondent, there is no reason whatsoever why the application of the respondent should not be allowed.

7. The two grounds therefore which have been urged in support of the appeal, in our opinion, must fail.

8. On behalf of the respondent a cross-objection has been urged and that relates to the question of interest. The learned Subordinate Judge has not made any order with regard to interest. Upon principle as well as on authority it is quite clear that if the respondent is entitled to restitution, he should have it in its fullest measure and in view of the decision of the Judicial Committee in the case of *Rodger v. Comptoir D'Escomptel De Paris* [1871] 3 P.C. 465, a decision which has been followed in numerous decisions in this country, the respondent will be entitled to interest on the sum of Rs. 1,200. It should be stated here that the amount was actually deposited in Court on 4th April 1925, but though the amount was deposited on that date it was really because of some indulgence which the

respondent asked for that he made the deposit. It would not therefore be right to make the appellants liable for interest for any period before 21st December 1926, which was the date on which the appellants withdrew the money in part satisfaction of their decree. Interest should run at the rate of 6 per cent per annum from that date until realization. The cross-objection is therefore allowed. There will be no order for costs, either in the appeal or cross objection.

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