

**Rajendra Narain Bagchi Vs. Watson and Co.**

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**SooperKanoon Citation :** [sooperkanoon.com/856469](http://sooperkanoon.com/856469)

**Court :** Kolkata

**Decided On :** Jun-08-1891

**Reported in :** (1891)ILR18Cal510

**Judge :** Prinsep and ;Banerjee, JJ.

**Appellant :** Rajendra Narain Bagchi

**Respondent :** Watson and Co.

**Judgement :**

**Prinsep and Banerjee, JJ.**

1. This was a suit by the plaintiff-appellant to recover a certain sum of money which is said to have been due from the defendants to the minor sons of one Sriram Chowdhry on account of ijara rent, and which the plaintiff claims under a transfer from the guardian of the minors. The defendants denied the plaintiff's right to sue alone, and they also denied the existence of the debt, and the reality and bona fides of the transfer to the plaintiff, and urged that the payment of consideration for the transfer was falsely stated in order to escape the provisions of Section 135 of the Transfer of Property Act, and that the plaintiff was in no case entitled to recover more than the price he may have actually paid with interest and expenses of the sale.

2. The First Court disallowed all the objections of the defendants and gave plaintiff a decree for the entire claim. On appeal the District Judge has reversed that decision and dismissed the claim, holding that, even if the transfer to the plaintiff be taken to have been for consideration, such consideration not being shown to have been the plaintiff's self-acquired money, plaintiff who is a member of a joint Hindu family, was not entitled to maintain this suit alone, and further that in reality the transfer was not bona fide for consideration.

3. In second appeal it is contended, on behalf of the plaintiff, that the decision of the District Judge is wrong, because the transfer to the plaintiff, having been notified by the transferor to the defendants, the debtors, and having been further admitted by her in her deposition as a witness, the defendants were bound, under Section 133 of the Transfer of Property Act, to give effect to the transfer, and it was not competent to them to question the plaintiff's right to sue for the debt either on the ground of his having other co-sharers interested with him in the claim, which was the subject-matter of the transfer, or on the ground of the transfer not being bona fide for consideration.

4. With reference to the former of these two grounds of objection to which the Lower Appellate Court has given effect, it is sufficient to say that though, as a general rule, no one can enforce a claim by suit if he is not beneficially interested in the subject-matter thereof, that rule is subject to exceptions, and that the case of the ostensible transferee of a debt, after the transfer is notified to the debtor, is an instance of such an exception by reason of the provisions of Section 133 of the Transfer of Property Act. The reason for that provision of the law is obviously this, that every debtor is bound to pay his debt to his creditor or to any other person to whom the creditor directs him to pay it. It was argued for the respondents that if the debtor is aware that some person other than the party to whom the creditor directs him to pay his debt is by reason of a prior or simultaneous transfer from the creditor justly entitled to recover, it would be allowing the debtor and creditor to commit a gross fraud if the person named by the latter is held entitled to enforce his claim. But the answer to this is that it is always in the power of a prior assignee or a co-assignee to protect himself by insisting upon a notice in his favour from the assignor to the debtor at the time of the transfer to him.

5. The second objection of the debtors which has been allowed by the learned Judge below to prevail seems to us to be equally untenable. The creditor having admitted the transfer and given notice of it to the debtors, it was no business of theirs to enquire whether the transfer was bona fide for consideration. Here it was urged for the respondents that an enquiry into the amount of the consideration was necessary in order to enable the debtors to avail themselves of the provisions of Section 135 of the Transfer of Property Act, and to obtain their discharge by paying to the purchaser the price paid with interest and incidental expenses. If the first paragraph of Section 135 be applicable to this case, no doubt an enquiry into the amount of consideration would be necessary. But we do not think that the first paragraph of Section 135 has any application to a case like the present in which the debtors deny the existence of the debt altogether, and the purchaser of the debt has to obtain judgment affirming the claim before any satisfaction is made or tendered. Clause (d) of the section, by providing that nothing in the first paragraph of the section applies where the judgment of a Court has been, or is about to be, delivered affirming the claim, makes the matter clear. This view is in accordance with the decision of this Court in the cases of *Girish Chandra v. Kasiswari* Debt I.L.R. 13 Cal. 145 and *Khosdeb Biswas v. Satis Mondul* I.L.R. 15 Cal. 436 and of the Madras High Court in *Subbammal v. Venkatarama* I.L.R. 10 Mad. 89. The Allahabad High Court has, it is true, taken a different view in the case of *Jani Begum v. Jahangir Khan* I.L.R. 9 All. 476 and the learned Counsel for the respondent strongly relied upon that case and the reasons therein given, and contended that the first paragraph of Section 135 applied to this case, and that Clause (d) refers to cases where the sale takes place after judgment has been delivered affirming the claim or after it is made clear by evidence and is ready for judgment. But after careful consideration of his argument, we see no reason to question the correctness of the decisions of this Court.

6. The language of Clause (d) fully bears out our view. It would, we think, be wrong to limit the clause to cases where the judgment of a Court affirming the claim has been delivered, or where the case is made clear by evidence before the sale of the claim, since, if that had been the intention, it would have been expressed by adopting the same grammatical structure in this clause as in the three preceding clauses, and by using words such as these: 'Where it is made

after the judgment of a competent Court, &c;'. Nor is there anything unreasonable in this view, though it may not secure the discouraging of speculative purchases, the main object of the section, to the same extent that the opposite view does. There is good reason for compelling a speculative purchaser of an actionable claim to be satisfied if he gets from the party liable the price paid with interest and incidental expenses before the claim is made certain by suit; but the reason does not hold equally good after he has got his claim affirmed by suit in Court. It would be discouraging speculative purchasers sufficiently if they are told that it is in the power of those against whom claims are purchased to obtain discharge by paying them the price paid with interest and expenses, but it would be something more than discouraging such purchases and would indeed practically amount to prohibiting them if purchasers were told that they may recover nothing if they fail to establish the claims purchased, but they shall in no case get a pice more than the amount they have actually paid as price and expenses with interest. It was argued for the respondents that, if the above view is correct, it will be in the power of the purchaser by falsely overstating the price to prevent the debtor from getting the benefit of the section. We do not think that this would follow. Where the debtor without denying the claim offers to pay the purchaser the price paid by him with interest and expenses of the sale and merely disputes the amounts of these items, there, if the purchaser has to obtain judgment of the Court determining such amounts, it would not be a judgment affirming the claim, and so the case would not come under the exception in Clause (d) of Section 135, and the first paragraph of the section would apply. But that is not the case here.

7. We think, therefore, that the two grounds upon which the Court of Appeal below has dismissed the suit are both wrong in law, and the judgment appealed against must be reversed; and as the other questions raised in the case have not been disposed of by the Lower Appellate Court, the case must be remanded to that Court for their determination. Costs will abide the result.