

iswar Chandra Dutt and ors. Vs. Haris Chandra Dutt and ors.

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Court : Kolkata

Decided On : Jan-14-1898

Reported in : (1898)ILR25Cal718

Judge : Ghose and ;Ameer Ali, JJ.

Appellant : iswar Chandra Dutt and ors.

Respondent : Haris Chandra Dutt and ors.

Judgement :

Ghose, J.

1. The facts of this case are stated by the Subordinate Judge in his judgment as follows: One Mohesh Chunder Dutt obtained a decree for possession of a jote against the defendants, appellants (it should be plaintiffs, respondents), and also for mesne profits for the period of dispossession. Subsequently to the passing of the decree, on the 12th of Sraban 1298, Mohesh Chunder received from the judgment-debtors the amount due on account of wasilat, and for a further consideration of Rs. 156 relinquished an eight-anna share of the jote in favour of the judgment-debtors by an ekramamah which was duly registered. By a subsequent kobala, (also registered), dated the 19th of Bhadra 1299, Mohesh sold the remaining eight annas share of the jote to the judgment-debtors. But, on his death, his heirs, the present appellants, took out execution of the decree, and the judgment-debtors raised the objection that the decree was satisfied by virtue of the

ekramamah and kobala executed by Mohesh, but as this adjustment was not certified under Section 258 of the Civil Procedure Code, it was not taken into account, and the heirs of the decree-holder, Mohesh Chunder, were put in possession of the jote. Thereupon the judgment-debtors, the present respondents, brought a regular suit against the heirs of the decree-holders, the present appellants, claiming the following reliefs, viz.,

- (1) a declaration of the plaintiffs' rights to the jote in question;
- (2) a declaration that the heirs of Mohesh Chunder have no right to the jote in question;
- (3) for recovery of possession of the jote in question;
- (4) for an order restraining the defendants from recovering the mesne profits in execution of the decree;
- (5) for recovery of the value of the crops taken by the defendants from the jote in question;
- (6) for mesne profits for the period the plaintiff's were kept out of possession;
- (7) for costs of the suit; and
- (8) for any other suitable relief.'

2. The main defence to this action was that it was barred by the provisions of Section 244 of the Code of Civil Procedure.

3. The Court of First Instance overruled this plea, and held that the plaintiffs were entitled to the reliefs asked for in the plaint, save and except the fourth relief, namely, that the defendants may be restrained from recovering the mesne profits in execution of the decree. So far as this particular matter is concerned, it is not before us, the plaintiffs not having appealed in the Lower Appellate Court against the judgment of the Court of First Instance. The Subordinate Judge has, on appeal by the defendants, dismissed the suit upon the ground that Section 244 of the Code is a bar to the maintenance thereof; and in support of this view he has

quoted the case of *Azizan v. Matuk Lal Sahu*, (1893) I.L.R. 21 Cal. 437. The sole question, therefore, for our consideration is whether, by reason of the provisions of Section 244 of the Code, this suit is barred.

4. Now, it will be observed that the deeds under which the plaintiffs sought for the reliefs to which we have already referred, are deeds that were executed in their favour by the decree-holder upon dates subsequent to the passing of the decree, and for fresh consideration. No doubt, when the decree was sought to be executed, the plaintiffs contended before the execution Court that, by reason of the said two deeds, the decree in question had been satisfied, and, therefore, it could not be executed. But the Court in execution declined to go into the question, as indeed it was not competent to go into it, having regard to the provisions of Section 258 of the Code of Civil Procedure, the adjustment of the decree having been made out of Court, and having not been certified to the Court in accordance with the Code. Section 258 in the last paragraph provides: 'Unless such a payment or adjustment' (that is to say payment or adjustment out of Court) 'has been certified as aforesaid, it shall not be recognized as a payment or adjustment of the decree by any Court executing the decree.' So that it seems to be quite clear that the execution Court was not competent to recognize the adjustment, which was pleaded by the plaintiffs, of the decree in question.

5. In the case of *Azizan v. Matuk Lal Sahu* (1893) I.L.R. 21 Cal. 437 referred to by the Subordinate Judge, the facts were that the defendant had obtained a decree against the plaintiff, which he partially executed, and thereupon an adjustment of account took place between the plaintiff and the defendant, in which a certain sum was found due by the plaintiff to the defendant, for which sum the plaintiff gave a bond to the defendant, and in consideration of which the defendant agreed to exonerate the plaintiff from liability for the balance due under the decree. This satisfaction of the decree was not certified to the Court. Subsequently, the defendant applied for further execution of the decree. In a suit for a declaration that the defendant had no right to execute the decree, and for an injunction to restrain him from executing it, it was contended that the action was barred by Section 244 of the Civil Procedure Code. It was held by the majority of the Judges who composed the Divisional Bench that Section 244 is not limited by Section 258,

and that the suit is not maintainable, and that where a decree is satisfied by an agreement out of Court, and such satisfaction is not certified to the Court, a subsequent suit on the agreement is not maintainable if the object of the suit is to restrain the decree-holder from executing his decree in contravention of the agreement.

6. The circumstances of this case are very different. Eliminating from our consideration the fourth relief, which the plaintiffs asked for, namely, that the defendants might be restrained from recovering the mesne profits in execution of the decree, the object of the present suit is not to restrain the decree-holder from executing his decree in contravention of the agreement entered into between the parties as evidenced by the two documents, the ekrarnamah and the kobala, to which we have already referred, but rather the suit is with the object of recovering property under that agreement. The defendants, decree-holders, have already in execution of the decree been put in possession of the properties covered thereby, and what the plaintiffs now say is in effect this: Subsequent to the decree, you received from us certain considerations for which you conveyed the property covered by the decree; we were not at liberty to oppose the execution of the decree, and so you were put in possession of the property in execution; but we are, notwithstanding, entitled to recover the same from you upon the conveyances executed by you. We think that this action is quite maintainable.

7. It has, however, been contended by the learned Vakil for the respondents that the adjustment which was pleaded by the plaintiffs in the execution department could have been dealt with by the Court under Section 244 of the Code of Civil Procedure, and, therefore, the present suit is incompetent. But having regard to the provisions of the last paragraph of Section 258, to which we have already referred, we are unable to hold that the executing Court could go into a question which is distinctly prohibited from being gone into by 'any Court executing the decree.' It seems to us, therefore, that there is no reason why the plaintiffs should not be entitled to recover upon the documents to which we have already referred—documents executed subsequent to the passing of the decree, and by which distinct rights were conveyed to them.

8. Upon these considerations we think that the decree of the Court below should be set aside, and that of the Court of First Instance restored with costs, the ekrarnamah and kobala having been found to be genuine by the Court of First Instance, and that finding not having been impeached by the defendants before the Lower Appellate Court.

Ameer Ali, J.

9. The only question in this case is whether, having regard to the provisions of Section 244 of the Code of Civil Procedure, this suit is maintainable. Mohesh Chunder Dutt, the predecessor of the defendants, appears to have obtained a decree against the plaintiffs in respect of the lands in suit. Subsequent to the decree an arrangement was arrived at between him and the plaintiffs by which, in consideration of a certain sum of money paid by the plaintiffs, he transferred to them, or relinquished in their favour, a moiety of the said lands. Subsequent thereto he conveyed to them the remaining moiety also for consideration. Upon the death of Mohesh Chunder the defendants took out execution of the decree obtained by him. The plaintiffs objected that the decree having been adjusted no execution could issue. That objection was overruled on the ground that, inasmuch as the adjustment had not been certified, the Court was not in a position to entertain it. The defendants, thereupon, in execution of the decree, obtained possession of the lands in suit. The plaintiffs now bring this suit for a declaration of their right in respect of this jote upon the basis of the relinquishment and the conveyance executed by Mohesh, and they pray for the usual ancillary reliefs. They also ask for an injunction, which has been refused by the first Court. The suit, therefore, was not directed to interfere in any way with the execution of the decree that had been obtained by Mohesh nor was its scope parallel to any of the matters referred to in Section 244 of the Civil Procedure Code, and consequently it does not appear to be barred in any way by the provisions[724]of that section. But it is contended that, under the ruling in the case of *Azizan v. Matuk Lal Sahu* (1893) I.L.R. 21 Cal. 437 the suit is not maintainable because the plaintiffs could have, in the course of the execution of the decree, raised the objection that, there being this relinquishment and conveyance from Mohesh in their favour, the decree could not be executed. But if regard be had to the provisions of Section 258 it will

be seen that it covers a much larger ground than what is covered by Section 244 of the Code of Civil Procedure. Section 258 deals with all adjustments arrived at between the decree-holder and the judgment-debtor. An adjustment may not be confined to the satisfaction or discharge of the decree. There may be matters in the course of an adjustment which may be outside that, and there is no reason whatsoever why, if any other arrangement has been arrived at, the judgment-debtors should not be entitled to maintain an action upon it, nor does there appear to be any ground based upon the provisions of Section 244 which would preclude the maintenance of such an action.

10. I may observe that the case of *Azizan v. Matuk Lal Sahu* (1893) I.L.R. 21 Cal. 437 is one of a peculiar character. The decision there is limited to the reason that a subsequent suit brought with the object of interfering with the execution of the decree cannot be maintained under Section 244. How far I would be prepared to concur in the conclusion arrived at in that case it is not necessary to consider in the present case, for the facts here are totally different.

11. I am of opinion, therefore, that the suit was maintainable, that there is nothing in the provisions of Section 244 which covers this suit, and that the Lower Appellate Court was wrong in dismissing the plaintiffs' action on the ground was done. I agree, therefore, in setting aside its order and in restoring the decree of the first Court.