

Dhani Ram Gupta & Ors vs Lala Sri Ram & Anr on 7 December, 1979

Equivalent citations: 1980 AIR 157, 1980 SCR (2) 469, AIR 1980 SUPREME COURT 157, (1980) 1 APLJ 35, (1980) 2 SCR 469 (SC), 1980 2 SCR 469, 1980 UJ (SC) 145, 1980 3 MAH LR 134 (SC), 1980 (2) SCC 162, (1980) ALL WC 83

Author: O. Chinnappa Reddy

Bench: O. Chinnappa Reddy, V.R. Krishnaiyer, R.S. Pathak

PETITIONER:
DHANI RAM GUPTA & ORS.

Vs.

RESPONDENT:
LALA SRI RAM & ANR.

DATE OF JUDGMENT 07/12/1979

BENCH:
REDDY, O. CHINNAPPA (J)
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REDDY, O. CHINNAPPA (J)
KRISHNAIYER, V.R.
PATHAK, R.S.

CITATION:
1980 AIR 157 1980 SCR (2) 469
1980 SCC (2) 162

ACT:
Code of Civil Procedure 1908 (V of 1908), Order XXI
Rule 16-Assignment of decree-Application for execution of
decree by assignee-Adjustment between judgment-debtor and
original decree-holder after notice of such application-
Execution of decree whether barred.

HEADNOTE:
The appellants who were the assignees of a decree for
specific performance of an agreement to reconvey property,
filed an application for execution of the decree under Order
XXI, rule 16 of the Code of Civil Procedure. Notice of the
application was issued to the respondent-judgment-debtor as
well as the original decree-holder. The judgment-debtor

filed objections contending that the execution application was not maintainable. The application was adjourned from time to time. In the meanwhile the original decree-holder and the judgment-debtor moved the executing court to record full satisfaction of the decree, stating that they had entered into a compromise and that the decree was proposed to be satisfied by payment of a fixed sum of money in cash. The money was paid in cash by the judgment-debtor to the original decree-holder in open court and satisfaction of the decree was recorded by the Executing Court which also observed that the compromise would not have any effect whatsoever on the rights, if any, of the transferee decree-holder who had already filed the execution application pursuant to the deed of assignment. The execution application filed by the appellants was thereafter taken up and dismissed on the ground that the assignees had no right to execute the decree after the judgment-debtor had satisfied the original decree-holder by entering into a compromise with him.

In the appeal, the District Court held that the appellants had the right to execute the decree and that their right could not be defeated by the collusive compromise entered into between the judgment-debtor and the original decree-holder subsequent to the date of assignment and with notice of assignment.

In the further appeal to the High Court by the judgment-debtor, it was held that the assignee of the decree had no right to execute the decree until the assignment was recognised by the Court and until that was done, it was open to the original decree holder to put the decree in execution and it was also open to the judgment-debtor to satisfy the decree fully by payment to the decree holder or by other adjustment.

In the appeal to this Court by the assignees of the decree on the question whether the adjustment of the decree between the judgment debtor and the transferor-decree-holder barred execution of the decree by the transferee:

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HELD: 1. The High Court was wrong in holding that the adjustment between the judgment-debtor and the transferor-decree-holder even after notice

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of the application under Order XXI, rule 16 had been served on the transferor and the judgment debtor barred execution of the decree by the transferee. [475 D]

2. Property in a decree must pass to the transferee under a deed of assignment when the parties to the deed of assignment intend such property to pass. It does not depend on the Court's recognition of the transfer. Order XXI rule 16 neither expressly nor by implication provides that assignment of a decree does not take effect until recognized by the Court. [473 D]

3. While Order XXI rule 16 enables the transferee to

apply for execution of the decree, the first proviso to Order XXI rule 16 enjoins that notice of such application shall be given to the transferor and the judgment debtor and that the decree shall not be executed until the court has heard their objections, if any, to its execution. [473 E]

4. The transfer as between the original decree-holder and the transferee is effected by the deed of assignment. If the judgment-debtor has notice of the transfer, he cannot be permitted to defeat the rights of the transferee by entering into an adjustment with the transferor. If the judgment-debtor has no notice of the transfer and enters into an adjustment with the transferor before the transferee serves him with notice under Order XXI Rule 16 the judgment-debtor is protected. [473 G]

In the instant case, the original decree-holder and the judgment-debtor had colluded to deprive the appellants of their rights under the deed of assignment and the Executing Court tacitly gave its seal of approval by permitting satisfaction of the decree to be entered despite the fact that the decree had already been assigned to the knowledge of the judgment-debtor. The process of the Court cannot be reduced to a mockery and the procedure prescribed by the Code of Civil Procedure does not permit this to be done. [472 C]

Dwar Buksh Sirkar v. Fatik Jali I.L.R. 26 Calcutta 250 @ 253, 254; Avrapalli Ramrao v. Kanumarlappudi Ranganayakulu and others AIR 1964 A.P. 1; Sadagopa Chariar v. Raghunatha Chariar ILR 33 Mad. 62, approved.

Puthiandi Mammed v. Avalil Moidin ILR 20 Mad. 157, disapproved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1113 of 1976.

Appeal by Special Leave from the Judgment and Order dated 16-4-1976 of the Allahabad High Court in execution Second Appeal No. 2162 of 1974.

J. P. Goyal and S. K. Jain for the Appellants. P. G. Gokhale and B. R. Agarwala for the Respondents. The Judgment of the Court was delivered by CHINNAPPA REDDY, J.-Rattan Lal sold certain land to Sri Ram for Rs. 10,000/- under a registered sale deed dated 31 March, 1960. On April 4, 1960 Sri Ram executed an agreement to reconvey the property for a sum of Rs. 15,000/- if paid within a period of two years. Rattan Lal filed suit No. 18 of 1961 in the Court of First Additional Civil Judge, Meerut for specific performance of the agreement to reconvey and obtained a decree on April 17, 1962. The decree was confirmed in appeal by the High Court of Allahabad on September 5, 1963. On April 25, 1963 Rattan Lal assigned the rights which he had under the decree in favour of the present appellants, Dhani Ram Gupta and another. The appellants filed an application for execution of the decree under Order XXI, Rule 16 of the Code of Civil Procedure on December 10, 1963. Notice of

application was issued to Sri Ram, the judgment debtor as well as the original decree-holder Rattan Lal. Rattan Lal kept quiet but on March 7, 1964, the judgment debtor Sri Ram filed objections contending that the execution application was not maintainable. The application was adjourned from time to time. Meanwhile, on May 26, 1964, Rattan Lal the original decree-holder and Sri Ram, the judgment debtor moved the Executing Court to record full satisfaction of the decree. It was stated that the parties had entered into a compromise and that the decree was proposed to be satisfied by payment of a sum of Rs. 7,000/-in cash by the judgment debtor to the original decree-holder. The amount was paid in open Court and satisfaction of the decree was duly recorded on May 27, 1964 by the Executing Court, who, however, observed that the compromise would not have any effect whatsoever' on the rights, if any, of Dhani Ram, who had already filed an execution application pursuant to the deed of assignment dated April 25, 1963. Thereafter, the execution application filed by the appellants was taken up and was dismissed on October 9, 1964, on the ground that the assignee had no right to execute the decree after the judgment debtor had satisfied the original decree-holder by entering into a compromise with him. On appeal the learned Additional District Judge, Meerut held that the appellant assignees had the right to execute the decree and that their right could not be defeated by the collusive compromise entered into between the judgment debtor and the original decree holder subsequent to the date of assignment and with notice of assignment. One of the contentions raised before the learned Additional District Judge was that the so called deed of assigned did not in fact have the effect of assigning the decree to the appellants. That contention was also negated by the learned District Judge. On further appeal to the High Court by the Judgment debtor, it was held that the assignee of the decree had no right to execute the decree until the assignment was recognised by the Court. Until that was done, it was held, it was open to the original decree holder to put the decree in execution; it was also open to the judgment debtor to satisfy the decree fully by payment to the decree-holder or by other adjustment. The High Court however, did not express any opinion on the question whether the deed of assignment did assign the right of the decree-holder to the appellants. The assignees of the decree have preferred this appeal after obtaining special leave under Article 136 of the Constitution.

Even the bare statement of the facts is sufficient to show how the original decree-holder and the judgment debtor have colluded to deprive the appellants of their rights under the deed of assignment and how the Executing Court tacitly gave its seal of approval by permitting satisfaction of the decree to be entered despite the fact that the decree had already been assigned to the knowledge of the judgment debtor. The process of the Court cannot be reduced to a mockery and we do not think that the procedure prescribed by the Code of Civil Procedure permits this to be done notwithstanding the argument of Shri D. V. Patel and Shri Govind Dass, learned Counsel for the judgment-debtor to the contrary, in support of the judgment under appeal. Their submission was that the assignee of a decree had no rights until the assignment was recognised by the Court. In substance, the submission of the learned Counsel was that the recognition by the Court it was that completed the assignment and gave the right to the assignee to execute the decree.

Let us examine if the provisions of the Code of Civil Procedure justify the submission of the learned counsel. Section 2(3) defines "decree-holder" as meaning "any person in whose favour a decree has been passed or an order capable of execution has been made". Section 51 provides that the Court may, on the application of the decree holder order execution of the decree by various methods.

Section 146 provides that where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him. Order XXI of the Code of Civil Procedure deals with execution of decrees and orders and Order XXI r. 2 in particular provides for payment or adjustment out of Court and for the recording of satisfaction of the decree by the Court in whole or in part as the case may be. Order XXI r. 16 with which we are primarily concerned is as follows:

"16. Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder:

Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution: Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others."

"(Explanation-omitted)".

We are unable to read Order XXI r. 16 as furnishing any foundation for the basic assumption of the learned counsel for the respondent that property in a decree does not pass to the transferee under the assignment until the transfer is recognised by the Court. Property in a decree must pass to the transferee under a deed of assignment when the parties to the deed of assignment intend such property to pass. It does not depend on the Court's recognition of the transfer. Order XXI r. 16 neither expressly nor by implication provided that assignment of a decree does not take effect until recognised by the Court. It is true that while Order XXI r. 16 enables a transferee to apply for execution of the decree, the first proviso to Order XXI r. 16 enjoins that notice of such application shall be given to the transferor and the judgment-debtor and that the decree shall not be executed until the Court has heard their objections, if any, to its execution. It is one thing to say that the decree may not be executed by the transferor until the objections of the transferor and the judgment-debtor are heard, it is an altogether different thing to say that the assignment is of no consequence until the objections are heard and decided. The transfer as between the original decree-holder and the transferee is effected by the deed of assignment. If the judgment debtor has notice of the transfer, he cannot be permitted to defeat the rights of the transferee by entering into an adjustment with the transferor. If the judgment debtor has no notice of the transfer and enters into an adjustment with the transferor before the transferee serves him with notice under Order XXI r. 16, the judgment-debtor is protected. This in our view is no more than plain good sense. In *Dwar Buksh Sirkar v. Fatik Jali*, the decree holder represented to the Court that the judgment debtor had satisfied the decree by payment and wanted his execution application to be disposed of accordingly. Before satisfaction could be recorded a transferee of the decree from the original decree-holder intervened and claimed that satisfaction could not be recorded as there was a valid transfer of the

decree in his favour prior to the alleged payment by the judgment debtor to the original decree holder. The argument before the High Court was that the assignee could not prevent the recording of the satisfaction of the decree as he had not filed an execution application and got the assignment in his favour recognised. The High Court of Calcutta observed:

"The only provision in the Code referring expressly to the assignment of a decree is contained in section 232, and that no doubt contemplates a case in which the assignee applies for execution. In such a case the Court may, if it thinks fit, after notice to the decree-holder and the judgment-debtor, allow the decree to be executed by the assignee. If, however, there is an assignment pending proceedings in execution taken by the decree-holder, I see nothing in the Code which debars the Code from recognising the transferee as the person to go on with the execution. The recognition of the Court is no doubt necessary before he can execute the decree, but it is the written assignment and not the recognition which makes him the transferee in law. The omission of the transferee, if it was an omission, to make a formal application for execution, was merely an error of procedure and does not affect the merits of the.....It is argued for the respondent that the transferee's title was not complete as express notice of the transfer had not been given to the judgment-debtor. As already observed, the transfer, as between transferor and the transferee, is effected by the written assignment. If the judgment-debtor had no notice of the transfer and being otherwise unaware of it paid the money to the decree-holder, the payment was, of course, a good payment, and he cannot again be held liable to the transferee".

We express our agreement with the observations made by the Calcutta High Court.

In one of the cases cited by the learned counsel for the respondent, namely Arvapalli Ramrao v. Kanumarlapudi Ranganayakulu and others, a Full Bench of the Andhra Pradesh High Court disagreeing with the observations made in Puthiandi Mammed v. Avalil Moidin, and agreeing with the observations made in Sadagopa Chariar v. Raghunatha Chariar held that when a decree was transferred by an assignment in writing the property in the decree passed to the transferee at the time of assignment and that recognition of the Court was not necessary to complete the transaction of assignment but was required to enable the assignee decree-holder to proceed with the execution. We agree.

The learned counsel for the respondent relied upon Kadir Mira Sahib v. Peer Mohd., Ch. Mohd. Ishrat Ali & Ors. v. Molvi Sayed Raza and Duvvuru Balasubramanya Reddy v. Duvvruru Munuswami Reddy & Ors. We do not think that it is necessary for us to refer in any detail to these cases. The basic assumption in Ch. Mohd. Ishrat Ali & Ors. v. Molvi Sayed Raza and Duvvuru Balasubramanya Reddy v. Duvvuru Muniswami and Ors. (supra) and was that the transfer was complete only on recognition by the Court. We have pointed out that it is not so. In Ch. Mohd. Ishrat Ali & Ors. v. Molvi Sayed Raza (supra) there are some observations which are helpful to the respondent but the question presently under consideration did not arise and we need say no more than that.

We are of the view that the High Court was wrong in holding that the adjustment of the decree between the judgment-debtor and the transferor decree-holder even after notice of the application under Order XXI, r. 16 had been served on the transferor and the judgment-debtor barred execution of the decree by the transferee. The question whether there was any transfer of the decree under the deed of assignment was not decided by the High Court and we, therefore, allow the appeal and remit the matter to the High Court for decision upon this question only. The appeal is allowed with costs as indicated.

N.V.K. Appeal allowed.