

Balwant Singh vs Maharaj Singh And Ors. on 17 December, 1953

Equivalent citations: AIR 1954 ALLAHABAD 484

JUDGMENT

Malik, C.J.

1. This is judgment-debtor's appeal. Maharaj Singh and others filed a suit No. 139 of 1944 and obtained a decree for over Rs. 4,000/- against the appellant Balwant Singh. On 21-1-1948, Maharaj Singh applied for execution of the decree. The judgment-debtor, Balwant Singh, raised an objection that the whole decree had been satisfied. This objection has been overruled by the lower Courts except to this extent that the amount due to one Yad Ram was allowed to be deducted & the decree was held to be executable for the balance. It is against this order that this Execution Second Appeal was filed.

2. Yad Ram had four revenue decrees for small amounts, the total of which was Rs. 185/- odd. In execution of those decrees it is said that Yad Ram had attached the decree in Suit No. 139 of 1944. Neither the attachment order nor the record of the revenue court has been summoned here, so we do not know the date on which such an attachment was made, taut we may assume that the decree in Suit No. 139 of 1944 was attached.

3. It is said that after having attached the decree in Suit No. 139 of 1944 Yad Ram applied for execution of that decree. The record of those proceedings has also not been summoned to this Court and, therefore, it is not possible for us to check up the statement of facts given by learned counsel.

Learned counsel has, however, stated that in this application for execution Yad Ram prayed that the decree in Suit No. 139 of 1944 be executed, certain moveable properties belonging to the judgment-debtor, Balwant Singh, be sold and the sum of Rs. 185/- odd due to Yad Ram be realised so that his decrees may be satisfied. The details of the amounts due under the four decrees were given in the remarks column and the prayer has been read out by learned counsel from his brief.

On 21-10-1946, Yad Ram proceeded along with the Amin to have the property attached and then he made a statement to the Amin to the following effect :

"kul matalba munderje parwana kurki bad minhai fees kurki Balwant Singh madyun
decree se vasul paye lihaza kurki karana manzur nahi hai."

Neither the statement nor the Amin's report on the basis thereof, nor the parwana kurki are before us, but it is urged by learned counsel that these words mean that Yad Ram had received the total

amount of Rs. 4,000/- odd due under the decree in Suit No. 139 of 1944.

The lower Courts have not accepted this contention and we have no reason to differ from the conclusions arrived at by the lower Courts. Yad Ram was interested only in his sum of Rs. 185/- odd and he wanted to realise that amount by execution of the decree in Suit No, 139 of 1944 and when he said "kul matalba munderje parwana" it does not necessarily mean that he meant any-thing more than the amount due to him. However, on the basis of this statement the Amin made a report that Yad Ram had said that the amount mentioned in the 'parwana' had been received and on 2-11-1946, the learned Judge struck off the execution application filed by Yad Ram in full satisfaction.

4. Great reliance has been placed by learned counsel on this order of 2-11-1946, but, if Yad Ram had executed the decree only for the purpose of realising the amount due to him, the fact that the execution application was dismissed in full satisfaction does not necessarily mean that the learned Judge intended to hold that the whole amount of Rs. 4,000/- odd due under the decree had been paid. The lower Courts have held that Yad Ram was paid only the amount due under his four decrees and that seems to us to be correct.

5. Learned counsel for the respondents has urged that even if it be assumed that on 2-11-1946, the executing court had intended to hold that the whole amount of the decree in Suit No. 139 of 1944 had been paid, this cannot bind Mahraj Singh as no notice had been given to him and he cannot, therefore, be deemed to be a party to the proceedings. He has further urged that even if Balwant Singh had made any payment out of Court to Yad Ram in excess of the amount due to him such a payment cannot affect the rights of Mahraj Singh and the payment must be deemed to have been made by Balwant Singh at his own risk.

6. On behalf of the appellant it is urged that Yad Ram must be deemed to be the legal representative of Mahraj Singh and, if in the presence of Yad Ram the decree was held to be satisfied and was struck off in full satisfaction, Mahraj Singh was bound by that order.

Reliance for this submission is placed on two decisions of this Court. In -- 'The Unao Commercial Bank Ltd., Unao v. Mohar Gobind Rai', AIR 1930 All 659 (A), Sheo Nandan Prasad had a decree against two persons whose names need not be given. The Unao Commercial Bank and the Punjab National Bank held money decrees against Sheo Nandan Prasad. The Unao Commercial Bank applied for execution of the decree. The Punjab National Bank also filed an application for execution and both the banks attached the decree that Sheo Nandan Prasad had obtained against his judgment-debtors.

A sum of Rs. 1,000/- was paid to the pleader of the Unao Commercial Bank, decree-holder. This amount the pleader failed to deposit in court and he died. The Punjab National Bank claimed that this payment to the pleader of the Unao Commercial Bank should be deemed to be an unauthorised payment and the Punjab National Bank should be entitled to realise the whole amount due, ignoring the payment of Rs. 1,000/- by the judgment-debtors of Sheo Nandan Prasad. The question, therefore, arose of the rights of the decree-holders who have in execution of their own decrees attached the decree in favour of their judgment-debtor against a third party.

The learned Judges were of the opinion that an attaching decree-holder stepped into the shoes of the decree-holder of the decree attached and must be deemed to be the legal representative of such a decree-holder.

Reliance was placed by the learned Judges on Order 21, Rule 53(3), Civil P. C. That case, however, does not help the appellant as the amounts due in favour of the Unao Commercial Bank and the Punjab National Bank were far in excess of the sum of Rs. 1,000/- and they or any of them had therefore the right to realise the amount and the payment made to the Unao Commercial Bank could not be deemed to be an unauthorised payment.

7. In -- 'Firm Ram Bux Nath Mal v. Firm Mansa-Ram Murli-Dhar', AIR 1947 All 174 (B), the point that arose for decision was whether a judgment-debtor under a decree that had been attached could raise the point that the decree in favour of the attaching decree-holder was time-barred. The learned Judges were of the opinion that the attaching decree-holder was the legal representative of the decree-holder of the attached decree and the judgment-debtor could not raise an objection that the decree in favour of the attaching decree-holder was barred by limitation. The decision in that case has no bearing on the question for decision before us, but reliance is placed on certain general observations about the rights of the attaching decree-holder.

8. The word "legal representative" is defined in the Code of Civil Procedure and the definition does not include an attaching decree-holder who has attached a decree in favour of his judgment-debtor. There is no provision in the Code of Civil Procedure that a decree-holder who has attached a decree in favour of his judgment-debtor in execution of his own decree becomes clothed with all the rights of that decree-holder. Order 21, Rule 53, Civil P. C. has merely introduced a legal fiction. It provides for attachment of a decree in favour of a judgment-debtor and it also gives such an attaching decree-holder the right to execute the attached decree.

Sub-rule (3) of Rule 53 of the Order provides that "The holder of a decree sought to be executed by the attachment of another decree of the nature specified in Sub-rule (1) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof."

Read as a whole the sub-rule means that the attaching decree-holder will have the right to execute the attached decree in any manner lawful for the holder of that decree. The words "deemed to be the representative of the decree-holder" must be confined to the purpose mentioned in Sub-rule (3).

Dealing with this question their Lordships of the Judicial Committee in -- 'Radhakissen Chamria v. Durga Prosad', AIR 1940 PC 167 (C) said as follows :

"Two things are clear from this context, that he is a representative only by a legal fiction and that too for the purpose of lawfully executing the decree, i.e., enforcing it by process of the Court and 'satisfying his own decree' out of the proceeds of such execution." Their Lordships have dealt with this matter at some length. It is not necessary to quote the whole of the passage but at another place in the same

judgment their Lordships have said "For all these reasons it appears to their Lordships that the intention of the legislature was to make the certificate-holder, by a legal fiction, the representative or agent of the holder of attached decree for the limited purpose of executing the decree, i.e., enforcing it by process of the Court and of 'satisfy his own decree' out of the proceeds of such execution. He was not to be an assignee of the decree, so as to acquire all the rights of the original decree-holder in the decree."

9. There is, therefore, no force in the argument of the learned counsel that Mahraj Singh must be deemed to be bound by the order of the executing court dated 2-11-1946, dismissing the execution application in full satisfaction.

10. The appeal has no force and is dismissed with costs.