

Dhani Ram Gupta and Others

Vs

Lala Sri Ram and Another

Civil Appeal No. 1113 of 1976

(V.R. Krishna Iyer, R.S. Pathak, O. Chinnappa Reddy JJ)

07.12.1979

JUDGMENT

CHINNAPPA REDDY, J. –

1. Rattan Lal sold certain land to Sri Ram for Rs. 10,000 under a registered sale deed dated March 31, 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 21 rule 16 of the Code of Civil procedure on December 10, 1963. Notice of application was issued to Sri Ram, the judgment-debtor as the original decree-holder 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. 7000 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 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 assignment did not in fact have effect of assigning the decree to the appellants. That contentions was also negatived 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 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 his appeal after obtaining special leave under Article 136 of the Constitution.

2. 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 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 (sic) was that completed the assignment and gave the right to the assignee to execute the decree.

3. 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 21 of the Code of Civil Procedure deals with execution of decrees and orders and Order 21, rule 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 21, rule 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 not 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)

4. We are unable to read Order 21, rule 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 21, rule 16 neither expressly nor by the implication provides that assignment of a decree does not take effect until recognised by the court. It is true that while Order 21, rule 16 enables a transferee to apply for execution of the decree, the first proviso to the Order 21, 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. It is one thing to say that the decree may not be executed by the transferee 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 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 21, rule 16 of the judgment-debtor is protected. This in our view is no more than plain good sense. In *Dwar Buksh Sirkar v. Fatik Jali* (ILR 26 Cal 250, 253, 254), 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 judgment-debtor, allow the decree to be executed by the assignee, if, however, there is an assignment pending in execution taken by the decree-holder, I see nothing in the Code which debar 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 case .... It is argued for the respondent that the transferee's title was not complete as express notice of the transfer had 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 observations made by the Calcutta High Court.

5. In one of the cases cited by the learned counsel for the respondent, namely, *Arvapalli Ramrao v. Kanumarlapudi Ranganayakulu* (AIR 1964 AP 1 : 1963 Andh LT 153), a Full Bench of the Andhra Pradesh High Court disagreeing with the observations made in *Puthiandi Mammed v. Avalil Moidin* (ILR 20 Mad 157), and agreeing with the observations made in *Sadagopa Chariar v. Raghunatha Chariar* (ILR 33 Mad 62) 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.

6. The learned counsel for the respondent relied upon Kadir Meera Saheb v. Pir Mohd. (AIR 1933 Mad 523 : 64 MLJ 732), Ch. Mohd. Ishrat Ali v. Molvi Sayed Raza (AIR 1945 Oudh 225) and Duvvuru Balasubramanya Reddy v. Duvvuru Munuswami Reddy (AIR 1960 AP 305). 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 v. Molvi Sayed Raza (AIR 1933 Mad 523 : 64 MLJ 732) and Duvvuru Balasubramanya Reddy v. Duvvuru Munuswami Reddy (AIR 1960 AP 305) 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 v. Molvi Raza (AIR 1945 Oudh 225) 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.

7. 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 21, rule 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.

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