

ALLAHABAD HIGH COURT

A.P. Bagchi

Vs.

Mrs. F. Morgan

(Niamatullah, J.)

14.02.1935

JUDGMENT

Niamatullah, J.

1. This is an execution decree appeal arising out of certain objections taken by the appellant to the amount of decretal money payable by him. It appears that the appellant was defendant in a suit for ejectment from a house admittedly belonging to the respondent, who also claimed a certain sum as rent or compensation for use and occupation of the house. The suit was decreed together with a certain sum awarded to the plaintiff for rent and another sum for use and occupation of the house. The Court made some distinction between these two items. It is however not necessary to dilate upon it in these proceedings. The appellant applied to the Court stating the amount decreed to the plaintiff and the amount which he himself claimed under two heads: (1) payment of taxes to the Municipal Board and (2) expenses incurred for sundry repairs to the house. He claimed to be entitled to deduct the sums spent by him on both these accounts from the decretal amount for which the decree-holder was entitled to take out execution.

2. The Court of first instance allowed a set off in respect of the Municipal taxes but did not allow any deduction in respect of sums spent on repairs. On appeal by the appellant, the lower appellate Court did not enter into the question whether the appellant was entitled to a deduction in respect of costs of repairs. It dismissed the appeal on the ground that Order 21, Rule 2, Civil Procedure Code, under which the application was made, did not apply. The appellant's case, as laid in his application in the Court of first instance, was that he was entitled to costs of certain repairs made by him, and that to that extent the decree in favour of the plaintiff should be deemed to have been satisfied. Accordingly he prayed that adjustment be recorded under Order 21, Rule 2, so as to entitle the decree-holder to take out execution only in respect of the balance. As a matter of fact, the appellant deposited the balance, and no question of any further execution should, according to him arise. In my opinion this view is based on a complete misunderstanding of Order 21, Rule 2, and the principle underlying it. That rule runs as follows:

Where any money payable under a decree of any kind is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

3. The rule applies only to cases in which, payment has been made to the decree-holder, or where adjustment of the decree has otherwise taken place to the satisfaction of the decree-holder. It cannot apply to a case in which the adjustment was not accepted by the decree-holder. It is not open to the judgment-debtor to decide for himself and act on the supposition that the decree has been wholly or partly adjusted, though the decree-holder is unwilling to accept that position. Mutual understanding is of the essence of the rule. It may be that the decree-holder and the judgment-debtor at first agreed to a certain adjustment) of the decree, but subsequently, when the judgment-debtor moved the Court, the decree-holder denied the alleged adjustment. In such a case, if the judgment-debtor proves by evidence j that the adjustments had taken place and the decree-holder is falsely denying it, the position would be different from a case in which the decree-holder and the judgment-debtor never arrived at any understanding. It is not suggested by the appellant that there was any understanding between the parties that sums spent by him on repairs would be set off against the decretal amount. This being so, Order 21, Rule 2, Civil Procedure Code, does not apply. The order appealed from is correct. The appeal is dismissed under Order 41, Rule 11, Civil Procedure Code