

ALLAHABAD HIGH COURT

Thomas Skinner

Vs.

Ram Rachpal

(Rachhpal Singh, J.)

10.12.1937

JUDGMENT

Rachhpal Singh, J.

1. This is a judgment-debtor's first appeal arising out of an order passed in execution proceedings. The facts which have given rise to the appeal before us can very briefly be stated as follows: One Mt. Kishan Dei instituted a suit against Thomas Skinner alias Sultan Mirza to recover possession over some property and mesne profits. On 28th August 1926 the first Court passed a decree in favour of Mt. Kishan Dei for possession and also awarded to her a sum of Rupees 3004.13-6 on account of profits with proportionate costs. Thomas Skinner preferred an appeal to this Court against the decree which had been obtained by Mt. Kishan Dei. During the pendency of the appeal, it appears that Mt. Kishan Dei obtained possession over the property in suit in that case and also made an application for realising the sum for which she had obtained a money decree and prayed for attachment of three decrees which Thomas Skinner held against one Benarsi Das. This prayer of hers was granted. Subsequently she executed two of these decrees and the finding of the Court below is that a total sum of L 3369-10-0 was paid by Benarsi Das and Mt. Kishan Dei filed certificates in the cases in which the two decrees had been passed certifying the receipt of the above-mentioned amount from Benarsi Das. The result was that these two decrees were declared by the Court to be discharged as fully satisfied.

2. The appeal which had been preferred by Thomas Skinner to this Court was partially allowed and it was declared that Mt. Kishan Dei was only entitled to recover from Mr. Thomas Skinner a sum of L 2972. Thomas Skinner had instituted a suit against Mt. Kishan Dei; but after the decree of this Court, it became necessary for him to proceed with the same. He applied to the Court, in which that suit was pending, praying that it should be converted into an application under Section 144, Civil Procedure Code That was done and the Court in accordance with the provisions of Section 144, Civil Procedure Code, by its judgment dated 21st June 1930, directed that he should be restored possession over the property in suit because of the decree which had been passed by this Court. Mt. Kishan Dei has assigned her rights in the decree which she obtained from this

Court to one Ram Rachpal and this man has now made an application for the execution of that decree.

3. The application was opposed by the judgment-debtor. It was pleaded by him that nothing was due in respect of the decree which the decree-holder was seeking to enforce. He pleaded that it had been decided inter partes in the decision which the Court gave in respect of his application under Section 144, Civil Procedure Code, that the decree-holder would not be entitled to execute his decree till he had rendered accounts and as no accounts had been rendered, the decree-holder was not competent to execute the decree. The decree-holder took the plea in the Court below that as no application had been made in the Court executing the decree certifying any payment towards that decree within the period prescribed, Rule 2, Order 21, Civil Procedure Code applies and the judgment-debtor could not be permitted to plead any satisfaction partial or otherwise. The learned Judge of the Court below came to the conclusion that the contention raised by the decree-holder was correct. He held that as no steps had been taken to have the payment made to Mt. Kishan Dei by Benarsi Das certified, the judgment-debtor in the present case could not be permitted to plead that payment. It is against that order that the present appeal has been preferred by the judgment-debtor.

4. The first question which we have to consider in this case is whether the view taken by the Court below as regards the application of Rule 2, Order 21, Civil Procedure Code to the present case is correct. We have heard learned Counsel appearing on both sides and in our judgment, the view of the learned Civil Judge is not correct and therefore cannot be sustained. So far as the facts are concerned, there is no dispute. Admittedly, Mt. Kishan Dei made an application on 15th February 1928, under Order 21, Rule 53, Civil Procedure Code praying that three decrees which were held by Thomas Skinner against other persons be attached. In the present case we are concerned only with two of those decrees which were against Benarsi Das. From the record of the execution case, it appears that this application was granted and the Court passed an order directing that Mt. Kishan Dei was entitled to execute the decrees held by Thomas Skinner against other persons and the order further enjoined that the decree-holder should certify the payments which might be made to him. It appears that the decrees which Thomas Skinner had against Benarsi Das had been passed by the Revenue Court. Mt. Kishan Dei went to that Court and proceeded to recover the amount due from Benarsi Das by way of execution. Benarsi Das, as we have already pointed out, paid a sum of Rupees 3369-10-0 towards the two decrees in full satisfaction.

5. It has been argued before us by learned Counsel for the respondent that Rule 2, Order 21, applies to the case and therefore the judgment-debtor was not competent to ask that the payment made by Benarsi Das should be taken into account because no application had been made under Rule 2, Order 21, Civil Procedure Code Rule 2, Order 21 enacts as follows:

(1) 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.

(2) 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, on a day to be fixed by the Court, 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) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognized by any Court executing the decree.

6. Now the question which we have to consider is whether this Rule has any application to the case before us. We are of opinion that the Rule does not apply to it. It appears to us that the Rule makes provisions in respect of two kinds of payments. The first is a case where a payment has been made out of Court by a judgment-debtor and the other is where; the decree is adjusted in whole or in part between the decree-holder and the judgment-debtor. Now so far as the second case is concerned, there is no difficulty. There has been no adjustment of any kind between the decree-holder on the one hand and the judgment-debtor on the other. We have only therefore to consider whether in the case before us, it can be said that the payment of which the judgment-debtor wishes to take advantage was made out of Court. The argument of learned Counsel for the respondent is that the payments made by Benarsi Das should be treated for the purposes of the case before us as having been made out of Court and as they were not certified, the judgment-debtor cannot be permitted to take advantage of the same. We however do not think having regard to the circumstances of the case before us, that it is correct to say that the payments were made out of Court. The decree-holder put his decree in execution against Thomas Skinner and asked that she should be permitted to execute the same with reference to the amount for which she had obtained decree from the Court of first instance. The prayer was for the attachment of the decrees which were standing in favour of; the judgment-debtor, Mr. Thomas Skinner. It was in pursuance of an order passed by the executing Court that the decree-holder, Mt. Kishan Dei was authorized to; go to the Revenue Court and get the amount which was due to Thomas Skinner, from Benarsi Das. The payment was made by Benarsi Das in that Court and therefore we do not see how it can be argued that it was a payment made outside the Court. Where a decree-holder makes an application for execution and in pursuance of an order passed by the executing Court realizes a certain amount from his judgment-debtor, then the payment will be deemed to have been made in Court and not outside Court. The cases in which a payment is made without the intervention of the Court have to be differentiated from those in which the payment is made after the Court has been moved to pass an order in favour of the decree-holder. Where a judgment-debtor makes a payment outside Court, the Court knows nothing about that payment and therefore Rule 2, Order 21 ordains that the parties should inform the Court about that payment. Similarly if there is an adjustment between a decree-holder and a judgment-debtor of which the

Court is not aware, the same rule is applicable; but different considerations will prevail where the intervention of Court is sought to enforce a decree. If a decree-holder makes an application to the Court for execution and obtains an order in his favour, then the Court knows what is going on. The Court in the present case was informed that a sum of money was due to Thomas Skinner from Benarsi Das and after knowing this, the Court passed an order authorising Mt. Kishan Dei to realize from Benarsi Das the money which was due to Thomas Skinner. The payment by Benarsi Das is made in the Court which had passed the decree against Benarsi Das. So, we are clearly of opinion that it cannot be said that this was a payment made out-j side the Court. There may be cases in which a Court may pass an order in favour of the decree holder directing an officer of the Court to go and realize a certain sum of money from the judgment-debtor. If the judgment-debtor makes a payment to an officer of the Court, it would not be right to hold that that payment has to be certified to the Court because it was not made "in Court". The payment is made to an officer of the Court whose duty it is to go and inform the Court as to how he executed its order and there does not seem to be any necessity in t a case of this description to insist that the judgment-debtor or the decree-holder should inform the Court of the payment. The Court will know of the payment without getting any information in that connexion. We, in these circumstances, hold that as the payments by Benarsi Das were made to Mt. Kishan Dei after the order of the Court executing the decree was passed, they are payments made in Court and therefore Rule 2, Order 21 has no application, This being our view, it must be held that the decision of the Court below is there a fore erroneous.

7. Another point which was pressed before 9 us on behalf of the appellant was that under Section 144, Civil Procedure Code proceedings, there was an order passed by the Court that 3 the decree-holder will not be entitled to execute the decree unless he has rendered & accounts about mesne profits to Thomas Skinner. We may be permitted to quote the following portion from the judgment of the Civil Judge who decided that case:

It is therefore just and proper that possession should be delivered to the plaintiff while the sum of L 2972 due from him to the lady, defendant, L postponed to her rendering accounts of all the collections she has made hitherto since after she 1 obtained the decree No. 99 of 1926. This the parties can do privately which is better than the other alternative of through the Court. In the latter ease, defendant's dues are ascertained as defined by the High Court but the plaintiff's will have to be ascertained, and setting off the smaller sum against the bigger, the balance shall be paid to either of the two....

8. It appears to us that having regard to this order which is binding upon the decree-holder, it is not open to her to execute her decree against Thomas Skinner unless she renders accounts of the profits which she had appropriated during her possession over Thomas Skinner's property. Ram Rachpal who is her assignee cannot be in any better position. There is however no finding of the Court below whether any account has been rendered by the decree-holder. This question will have to be decided by the Court below. For the reasons given above, we allow this appeal and set

aside the order passed by the learned Judge and hold that the judgment-debtor, Thomas Skinner, is entitled to take into account the amounts which Mt. Kishan Dei realized from Benarsi Das. The learned Judge of the Court below will find the exact amount realized by Mt. Kishan Dei from Benarsi Das and Thomas Skinner, the judgment-debtor, will be given credit for the same towards the satisfaction of the decree of the decree-holder. If it is found that after taking into account the sums paid by Benarsi Das, anything is still due to the decree-holder, then her assignee, Ram Raohpal, will be able to proceed with his application for execution after he has rendered accounts in respect of the profits realized by Mt. Kishan Dei as directed in the order of the Civil Judge, Mr. M.A. Nomani, *dated Thomas Skinner; - Plaintiff v. Mt. Kishan Dei and Anr. Defendants*¹. The appellant will get his costs in this Court as well as the costs incurred by him in the Court below up to the date of our judgment.

¹21st June 1930, in Suit No. 177 of 1928