

Mathurapore Zemindary Company Limited Vs. Bhasaram Mondal and ors.

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Court : Kolkata

Decided On : Feb-14-1924

Reported in : 80Ind.Cas.881

Judge : Hugh Walmsley and ;M.N. Mukerji, JJ.

Appellant : Mathurapore Zemindary Company Limited

Respondent : Bhasaram Mondal and ors.

Judgement :

M.N. Mukerji, J.

1. The facts which have given rise to this appeal are quite simple.

2. On the 4th February, 1920, Mr. G. Hennessy and others obtained a decree for rent against the respondents. The appellants, the Mathurapur Zemindary Company Limited on the 17th July, 1920 applied for execution of the said decree after being substituted in the place of the decree-holders on the basis of certain assignments in respect of the decree-holders' properties alleged to have been made in the first instance in September, 1919, and thereafter in January 1920. The learned Munsiff in whose Court the said application was made issued notice on the judgment debtors to show cause why the substitution should not be made. The judgment-debtors appeared, denied that there was any assignment of the decree in question and challenged the locus standi of the appellants to get themselves substituted or proceed with the execution. The learned Munsiff held that the appellants were not transferees of the decree either by assignment in writing or by operation of law and therefore they were not competent to apply for execution and consequently dismissed the application for execution. On appeal being taken from the said order, the order was affirmed and hence the present appeal to this Court.

3. It was contended on behalf of the appellants that by reason of the provisions of Section 148 of the Bengal Tenancy Act, a mere assignment of the decree would not have enabled them to execute the same as a rent decree, and inasmuch as they are assignees of the decree-holders' properties in respect of which the rent decree was passed, they were in a better position than mere assignees of the decree, that though there was no assignment of the decree in writing, there was one by operation of law inasmuch as the assignment of the properties had been made together with all arrears of rent and on principles of equity it should have been held that they were transferees of the decree by assignment. Reliance was placed on their behalf upon the case of Ananda Mohan Ray v. Promotha Nath Ganguli 57 Ind. Cas. 874 : 25 C.W.N. 863. It is unnecessary to refer to the other oases cited as they do not appear to bear upon the aforesaid contentions.

4. On the other hand, it was contended on behalf of the respondents that no consideration of equity could arise between an assignor and an assignee such as might arise between a mortgagor and a mortgagee as was the case in *Ananda Mohan Bay v. Promotha Nath Ganguli* 57 Ind. Cas. 874 : 25 C.W.N. 863. Reference was made on their behalf to the case of *Thakuri Gope v. Malik Mokhtear Ahmad* 69 Ind. Cas. 959 : (1922) Pat. 256 : 3 P.L.T. 625 : (1922) A.i.r. (Pat.) 563. in support of the contention that the transferee under such circumstances could not come in to execute the decree

5. At the outset, I may observe that the deeds of assignment upon which the appellants rely have not been placed before us, nor are they to be found on the record and the only indication of their contents that can be gathered is from the judgment of the Munsiff where he says that. 'It is contended that the properties of the decree-holders with all balances and sums of money due and owing by the raiyats and uncollected and unpaid on the day of assignment had been transferred.'

6. The relevant provision of the Code is Order XXI Rule 16. It is not pretended in the present case that there was any assignment of the decree in writing, and it is well-settled that if it is to be a valid assignment within the meaning of this rule and one not by operation of law it must be in writing and a transferee under an oral assignment has no locus standi: *Parvata v. Digambar* 15 B 307 : 8 Ind. Dec. (N.S.) 208. The Judicial Committee in the case of *Jatindra Nath Basu v. Peyer Deye Debi* 34 Ind. Cas. 69 : 43 I.A. 108 : 43 C. 990 : 24 C.L.J. 67 : 14 A.L.J. 527 : 20 C.W.N. 866 : (1916) 1 M.W.N. 403 : 18 Bom. L.R. 509 : 20 M.L.T. 25 : 3 L.W. 553 : 31 M.L.J. 248 (P.C.). has observed that 'such a transfer of the decree could by reason of Section 232 of the Code of Civil Procedure 1882, (which with certain modifications which need not be referred to for our present purposes, corresponds to Order XXI, Rule 16 of the present Code) be effected only by an assignment in writing.

7. The contention that there was an assignment by operation of law is mainly based upon the observations of this Court in the case of *Ananda Mohun Ray v. Promotha Nath Ganguli* 57 Ind. Cas. 874 : 25 C.W.N. 863. Transferees by operation of law ordinarily would be legal representatives of the deceased decree-holder or the Official Assignee in the case of an insolvent debtor or the purchaser of a decree at a Court sale, or a minor succeeding to the estate which was in the hands of an executor, and other instances where there is a vesting of the interest by operation of statute.

8. It is necessary therefore to analyse the aforesaid decision very carefully in order to see whether it really professes to extend the meaning of that expression. The facts in that case were as follows: certain properties together with all rents, issues and profits arising therefrom or appertaining thereto were mortgaged; the mortgagee obtained a decree on this mortgage on the Original Side of this Court, and in execution of this decree the properties hypothecated together with all arrears of rent were sold and were conveyed by the Registrar to the appellants in this appeal on a certain date. On that day certain rent suits which the mortgagors had instituted previously for back rents in respect of some jamas held under the properties hypothecated were decided and decrees for rent passed in favour of the mortgagors. The appellants in the appeal applied for execution of the rent decrees and the question arose whether they could do so as there was no assignment of the decrees in writing or by operation of law. The learned Judges in the course of their Judgment commented on and distinguished the cases of *Ram sahai v. Gaya* 7 A. 107 : A.W.N. (1884) 224 : 4 Ind. Dec. (N.S.) 305 and *Dost Muhammad v. Altaf Hussain Khan* 17 Ind. Cas. 512 as being inapplicable as the

facts therein were different from those in the case they were dealing with. No doubt in the judgment of this Court in that case the observations of Sargent, C.J., in the case of Purmananddas v. Vallabdas 11 B. 506 : 6 Ind. Dec. (N.S.) 333 were quoted at length, but the decision of this Court as I read it, did not turn upon the meaning of the expression 'by operation of law.' this Court held that, 'In the present case, there was no assignment of the decree for arrears of rent in so many words, but not only the properties under which the jamas in arrears were included, but also all arrears of rents which were the subject of the rent suits were assigned to the appellants. The arrears of rent were none the less arrears though suits had been brought for them and decrees were passed for them on the very day the conveyance was executed and we think that in these circumstances the appellants may be treated as assignees of this decree under Order XXI, Rule 16.' Reference was no doubt made to the case of Purmananddas v. Vallabdas 11 B. 506 : 6 Ind. Dec. (N.S.) 333, but as I read the judgment of that case the decision therein really amounted to this that applying some doctrine of equity in the matter of interpretation of a document, the Court as a matter of fact held that 'the decree had been transferred by an assignment in writing.' Similarly in the case of Ananda Mohan Ray v. Promotha Nath Ganguli 57 Ind. Cas. 874 : 25 C.W.N. 863 from the fact that all arrears of rent had been assigned over, and there having been decrees passed in respect of some simultaneously with, if not before, the execution of the conveyance, the construction put upon the conveyance which was in writing was that it also meant to include the decrees.

9. In the case of Purmananddas v. Vallabdas 11 B. 506 : 6 Ind. Dec. (N.S.) 333 there was an assignment by certain executors who were trustees in respect of certain properties in favour of the cestui que trust, in the most general terms, the words being 'all moveable property, debts, claims, things in action whatever vested in them as such executors. Sargent, C.J., observes in his judgment, 'But it has been suggested that Parmanand is not a transferee of the decree under Section 232 of the Civil Procedure Code, because the decree has not been transferred to him by assignment in writing or by operation of law, and therefore he is not entitled to apply for execution. There is no doubt that in a Court of Equity in England, the decree would be regarded as assigned to Purmananddas and he would be allowed to proceed in execution in the name of the assignors. Here there is no distinction between law and equity, and by the expression 'by the operation of law' must be understood the operation of law as administered in these Courts. We think under the circumstances we must hold that this decree has been transferred to Purmananddas by operation of law. In the present case the decree has been transferred in writing as construed in these Courts.' These last words are very important and they appear in the judgment of Sargent, C.J., himself. In my judgment it is obviously right to invoke the aid of doctrines of equity in the matter of interpretation of a document of this nature executed by a trustee under a will in favour of the cestui que trust. If, however, this decision purports to lay down broadly that Courts of execution have to look to equity in considering whether there has been an assignment by operation of law I regret I am unable to assent to the proposition. The Madras High Court in the case of Bhandari v. Ramachandra 17 M.L.J. 391 : 2 M.L.T. 157, declined to apply the doctrine of equity in somewhat similar proceedings, and observed as follows: 'We are asked to hold that in the event which happened in this case the appellant is entitled to be treated as the transferee of a decree from the decree-holder for the purpose of Section 232, Civil Procedure Code notwithstanding that at the time of assignment there was no decree and no decree-holder. It seems to us that we should not be warranted in applying the doctrine of equity on which the appellant relies, which is stated in Palaniappa v. Lakshmanan 16 M. 429 : 5 Ind. Dec. (N.S.) 1005 for the

purpose of construing Section 232, Civil Procedure Code. We think the words decree-holder must be construed as meaning decree-holder in fact and not as including a party who in equity may afterwards become entitled to the rights of the actual decree-holder, and that the words of the section relating to a transfer of a decree cannot be construed so as to apply to a case where there was no decree in existence at the time of the agreement.' The Judicial Committee of the Privy Council had occasion to deal with a somewhat similar provision contained in Section 208 of Act VIII of 1859 in the case of *Abidunissa Khatoon v. Amirunnissa Khatoon* 2 C. 327 : 4 I.A. 66 : 1 Ind. Jur. 172 : 1 Ind. Dec. (N.S.) 500 (P.C.), and their Lordships condemned the consideration of principles of equity in such proceedings. Their Lordships observed as follows: 'Then we come to Section 208, which, undoubtedly is a section relating to proceedings for execution, and after judgment and decree. It is to this effect: 'If a decree shall be transferred by assignment or by operation of law from the original decree-holder to any other person, application for the execution of the decree may be made by the person to whom it shall have been so transferred, or his pleader, and if the Court shall think proper to grant such application, the decree may be executed in the same manner as if the application were made by the original decree-holder.' It appears to their Lordships, in the first place, that, assuming Wajed to have the interest asserted, the decree was not, in the terms of this section, transferred to him, either by assignment, which is not pretended, or by operation of law, from the original decree-holder. No incident had occurred on which the law could operate to transfer any estate from his mother to him. There had been no death; there had been no devolution; there had been no succession. His mother retained what right she had; that right was not transferred to him; if he had a right, it was derived from his father; it appears to their Lordships, therefore, that he is not a transferee of a decree within the terms of this section.'

Their Lordships have further to observe, that they agree with the Chief Justice in the view which he expressed,--that this was not a section intended to apply to cases where a serious contest arose with respect to the rights of persons to an equitable interest in a decree. it was not intended to enable them to try an important question, such as the legitimacy or illegitimacy of an heir. They are further fortified in this view by the consideration that, under Section 364 of this Act, no appeal would lie from any judgment or decision given in a proceeding under Section 203 : it appears difficult to suppose that such an important question as this should be triable without appeal. Therefore, in their Lordships' view, agreeing with that of the Chief Justice, Section 208 does not apply. Even if it did apply, it would appear to their Lordships that, inasmuch as proceedings under it are not subject to appeal, probably a suit would lie for the purpose of reversing an order made in pursuance of it.

10. In my opinion the fact that, under the present law there is an appeal does not take away the weight that should attach to the above observations.

11. In the case before us the outstanding features are that there was no assignment of the decree in fact in writing, that no questions of equity arise inasmuch as it was a simple transaction between an assignor and an assignee and that the decree was not in fact in existence on the date of the assignment but came into being long after that date. Under such circumstances can the assignee come in? There was no doubt an assignment of the properties, and I may assume, with all its back or future rents but that is essentially different from the transfer of the decree itself, see the observations of Mahmud, J., in *Ramsahai v. Gaya* 7 A. 107 : A.W.N. (1884) 224 : 4 Ind. Dec. (N.S.) 305, and *Hansraj Pal v. Nukhraj Kunwar* A.W.N. (1907) 280. A person to whom a party

agrees to transfer a decree that may be passed in a suit is not a transferee within the meaning of the rule: *Bhandari v. Ramachandra* 17 M.L.J. 391 : 2 M.L.T. 157. A transfer of the property during the pendency of the suit does not entitle the purchaser to apply for the execution of the decree unless he has taken steps to have his name substituted in the suit in the place of his vendor, and Order XXI, Rule 16, Civil Procedure Code does not apply to such a case: *Dost Muhammed v. Altaf Hossein* 17 Ind. Cas. 512; *Peer Mahomed Rowthan v. Ravuthan Ambatam* 30 Ind. Cas. 881; *Thakuri Gope v. Malik Mokhtar Ahmed*: 69 Ind. Cas. 959 : (1922) Pat. 256 : 3 P.L.T. 625 : (1922) a.i.r. (Pat.) 563. There having been no transfer by assignment in writing, the appellants could not by any application to the Court have kept the decree alive (see the observations of the Judicial Committee in the case of *Jatindra Nath Basu v. Peyer Deye Debia* 34 Ind. Cas. 69 : 43 I.A. 108 : 43 C. 990 : 24 C.L.J. 67 : 14 A.L.J. 527 : 20 C.W.N. 866 : (1916) 1 M.W.N. 403 : 18 Bom. L.R. 509 : 20 M.L.T. 25 : 3 L.W. 553 : 31 M.L.J. 248 (P.C.).

12. The appellants' contentions based on the provision of Section 148 of the Bengal Tenancy Act do not really assist them for if at all these provisions impose on the transferee of a rent decree a further disability which must be removed before he can apply for executing the decree as a rent decree.

13. The appellants' contentions, therefore, fail, the orders passed by the Courts below are correct and the appeal must be dismissed with costs--hearing fee three gold mohurs.

Walmsley, J.

14. I agree.

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