

(1880) 04 AHC CK 0003

Allahabad High Court

Case No: None

Sukhraj Rai

APPELLANT

Vs

Bujhawan Lal

RESPONDENT

Date of Decision: April 30, 1880

Citation: (1880) ILR (All) 866

Hon'ble Judges: Straight, J; Pearson, J

Bench: Division Bench

Judgement

Straight, J.

The following facts must be recapitulated in order to make the grounds upon which this appeal is based intelligible. On the 24th April 1877, Mahadeo Lal, defendant No. 2, brought a suit for work done and materials provided against Sukhraj Rai, the plaintiff. On the 10th May 1877, Sukhraj Rai, the plaintiff, instituted a suit on a bond against Mahadeo Lal, defendant, No. 2. On the 23rd June 1877, the claim in each case was decreed, that of Sukhraj Rai, the plaintiff, being for the larger amount. Meanwhile, namely, on the 9th May 1877, Bujhawan Lal, defendant No. 1, lodged an application for attachment of the amount pending in the suit of Mahadeo Lal, defendant No. 2, against Sukhraj Rai, the plaintiff, and an order was made to that effect. It is alleged by defendant No. 1, appellant before us, that notice was issued to Mahadeo Lal, defendant No. 2, not to receive and to Sukhraj Rai, plaintiff, not to pay, any sum that might be found to be due by the latter, to the former. The receipt of any such intimation is denied by Sukhraj Rai the plaintiff, but the matter is not very important either one way or the other in the decision of this case. On the 23rd June 1877, the plaintiff Sukhraj Rai, having obtained leave in the execution-department to set off the amount of defendant No. 2's decree against him, gave credit for the amount of that decree, and deducting it from his own decree against Mahadeo Lal, defendant No. 2, applied for execution in respect of the balance thereafter remaining due. About the same time Sukhraj Rai the plaintiff made an objection in the execution-department to defendant No. 1's attachment of the 9th May 1877, but it was disallowed, and the present suit is brought to have the Munsif's order to

that effect set aside and the propriety and legality of the set-off already mentioned established. On the 25th July 1877, Bujhawan Lal, defendant No. 1, obtained an order for attachment of the the decretal amount of Mahadeo Lal, defendant No. 2's decree against Sukhraj Rai the plaintiff, and on the 15th March 1879, he brought to sale and purchased it. The present suit was dismissed by the Munsif, but upon appeal the lower Appellate Court decreed the claim, and Bujhawan Lal, defendant No. 1, now appeals on the following grounds:--(i) that the decree of Mahadeo Lal against Sukhraj Rai having been previously attached, it was not competent for Sukhraj Rai to apply it as a part set-off to his decree against Mahadeo Lal; (ii) that as the decrees were not being simultaneously executed, no set-off could be made, and even if it could, it required to be sanctioned or refused in the execution-department and cannot be made the subject of a regular suit.

2. The substantial point for consideration appears to be whether the order of the Munsif of the 9th May 1877, attaching the amount of claim pending in the suit of Mahadeo Lal against Sukhraj Rai, was a good and valid one, and could effectually bar Sukhraj Rai from making a subsequent set-off of the amount of that decree in execution of a decree of his own against Mahadeo for a larger sum.

3. The provisions of Act VIII of 1859 are applicable to the case. It will be observed that, at the time the order of the Munsif was passed, no amount had been ascertained to be due from Sukhraj Rai to Mahadeo, and for aught that might appear to the contrary nothing was due. As a matter of fact, there was no debt owing from Sukhraj Rai to Mahadeo Lal, but Mahadeo Lal was indebted to him in a much larger amount, and when the two decrees were passed on the 23rd June, he being the holder of the decree for the larger amount was bound by the provisions of Section 209 of the old Procedure Code to take out execution for so much only as remained due to him, after deducting the amount due to Mahadeo Lal as to which satisfaction had to be entered up. As Mahadeo Lal had no claim against Sukhraj Rai and no debt was due, the order of the Munsif could have no operation or effect, and though it was possibly a wise precaution of Bujhawan Lal to get it made, his proper course would have been to follow it up by attaching the decree of Mahadeo Lal against Sukhraj Rai. This step, however, would not have put Bujhawan Lal in a better position, because Section 209 being followed and the decrees being essentially cross-decrees, that for the smaller amount became absorbed in the one for the larger, and attachment could not affect it. The appeal, therefore, fails and is dismissed with costs.