

(1916) 02 AHC CK 0025

Allahabad High Court

Case No: None

Taj Singh

APPELLANT

Vs

Jagan Lal

RESPONDENT

Date of Decision: Feb. 11, 1916

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 16

Citation: AIR 1916 All 219(1) : 35 Ind. Cas. 234

Hon'ble Judges: Walsh, J; Piggott, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. There was a decree passed nominally in favour of one Dale Ram. The respondent Jagan Lal, in the course of a suit against Dule Ram's heirs, obtained a decree to the effect that he was himself the beneficial owner of the decree. Having applied to the proper Court for that purpose, he obtained an order under Order XXI, Rule 16, of the Code of Civil Procedure, granting him permission to execute the decree as transferee of the same. Before that order was passed the present appellant, who was on the record as one of the judgment debtors, had received notice of Jagan Lal's application. He took no objection to the same and submitted to the order granting the said application. Subsequently Jagan Lal applied to the Court to take certain steps to execute the decree by sale of the property concerned. Thereupon the appellant filed an objection in which he said, first, that Jagan Lal was not a genuine transferee of the decree, because the whole proceedings between Jagan Lal and the heirs of Dule Ram were collusive and were not binding on him. On this the Court below has held that this was an objection which should have been taken in reply to Jagan Lal's application under Order XXI, Rule 16, and not having been so taken, it was concluded against the present appellant by the order of the Court bringing Jagan Lal on the record as transferee of the decree. This decision is supported by a ruling of this Court in *Oman Prasad v. Jani Durlab Shankar* 23 Ind.

Cas. 286 : 12 A.L.J. 206 with which we are in agreement. The other point taken by the appellant was that there had been an adjustment of the decree, so far as he himself was concerned, between himself and Dule Ram during the lifetime of the latter. On this the Court below has held that this adjustment, never having been certified to the Court, cannot be recognised by the Court executing the decree. This order is in accordance with the clear provisions of Order XXI, Rule 2, of the Code of Civil Procedure, and we find it to be correct. This appeal, therefore, fails and we dismiss it with costs.