

(1943) 11 CAL CK 0001

Calcutta High Court**Case No:** Appeal from Appellate Order No. 180 of 1942

Mrigendra Kumar Majumdar

APPELLANT

Vs

Abinash Chandra Deb

RESPONDENT

Date of Decision: Nov. 25, 1943**Final Decision:** Dismissed

Judgement

Henderson, J.

This appeal is by the decree-holder. He is a transferee of the decree. He is in an unfortunate position. He has admittedly been cheated by the judgment-debtor or by the original decree-holder. The assignment took place on 10th February, 1939. An objection under sec. 47 of the CPC was filed to the effect that the decree had been satisfied in full by a payment to the decree-holder on 6th February, 1939, i.e., four days before the assignment. An application under Or. 21, r. 2 of the CPC was made on 6th May, 1939, and allowed on admission by the original decree-holder. The Munsif in allowing the application of the Appellant under Or. 21, r. 16, rightly said that this finding would not bind him. The parties therefore went into evidence. The Munsif disbelieved the judgment-debtor's story of payment. This finding has been reversed by the Additional District Judge. This question of fact is therefore concluded against the Appellant.

2. The point of law raised in the appeal is that the judgment-debtor is precluded on the principles of constructive res judicata from raising the point. The Appellant's contention is that he ought to have raised it by an objection to the application under Or. 21, r. 16.

3. Under the first proviso to that Rule, the Court is prohibited from executing a decree transferred by assignment until the objection of the transferor and the judgment-debtor, if any, have been heard. The question therefore is whether the objections are confined to objections within the scope the Rule or whether the term includes any thing which might be taken under sec. 47.

4. There are two decisions of this Court which are opposed to the contention made on behalf of the Appellant-[Gopendra Prosad Sukul v. Ramkishore Saha I. L. R. 60 Cal. 1181 (1933) and Sm. Sahadan Bibi v. Mir Ali 40 C. W. N. 301 (1935)]. All that I need say is that I respectfully agree with them.

5. The appeal is dismissed. I make no order as to costs.