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(1917) 08 CAL CK 0006

Calcutta High Court

Case No: None

Srimati Nagendra Bala Dassi		APPELLANT
	Vs	
Debendra Nath Mahis and Others		RESPONDENT

Date of Decision: Aug. 29, 1917

Acts Referred:

- Trusts Act, 1882 - Section 88

Citation: 44 Ind. Cas. 13

Hon'ble Judges: Walmsley, J; Asutosh Mookerjee, J

Bench: Division Bench

Judgement

1. This is an appeal against an order in an execution case to the effect that the decree must be considered as satisfied and the judgment-debtors fully discharged. The events which have led up to this order are not in controversy at this stage. On 19th February 1907, Rani Mrinalini, wife of Raja Narendra Lal Khan of Narajole, obtained a consent decree in a mortgage suit against the respondents. There were various proceedings in execution, which need not be recited for our present purpose. On the 15th February 1915, the present appellant, Nagendra Bala Dassi, applied to the execution Court to have her name substituted in the place of the decree-holder, on the allegation that she had taken an assignment of the decree on the 7th February 1915. On the 20th February 1915, the original decree-holder intimated to the Court that she had transferred: the decree and had no objection to the grant of the application. The judgment-debtors took time to put in objections, but as they did not enter appearance on the day fixed, the name of the appellant was duly substituted and execution was directed to proceed at her instance. Four of the judgment-debtors subsequently applied to the Court to reconsider the matter, and their application was granted. Thereupon, they lodged an objection to the effect that the appellant had not really taken an assignment of the decree, but that her husband Babu Nabakumar Hazra, who was the Pleader for the judgment-debtors in the execution

case, was the purchaser of the decree and had put forward his wife as the ostensible transferee. The Subordinate Judge then proceeded to determine the question, whether Nagendra, Bala Dasi or Babu Nabakumar Hazra had taken an assignment of the decree and came to the conclusion that the Pleader had purchased the decree with his own money. The Subordinate Judge also found that the assignment had been taken for Rs. 11,500, while a much larger sum was due under the decree. The Subordinate Judge next proceeded to consider what he calls the legal and equitable aspect of this transaction and held that the effect of the purchase of the decree by the Pleader for the judgment-debtors was to satisfy the decree and to discharge the judgment-debtors. Nagendra Bala Dassi has now appealed to this Court, and on her behalf the decision of the Subordinate Judge has been assailed substantially on two grounds, namely, first, that the evidence does not establish that she was not the real purchaser of the decree, assuming that the question can be raised in execution proceedings, and secondly, that the decree cannot be treated as extinguished even if it be found that her husband had made the purchase with his own money. We are of opinion that the order of the Subordinate Judge cannot possibly be supported.

2. In the first place, the Subordinate Judge has decided the question of the reality of the assignment of the decree to the appellant, as if her husband were a party to the present proceedings. The Pleader, however, is not and could not be a party to the execution proceedings, and no question could consequently be decided as between him and his wife as to who was the beneficial owner of the decree.

3. In the second place, even if it were assumed that the Pleader had taken an assignment of the decree (which we do not decide upon the evidence), it is plain that the decree could not be deemed as extinguished and the judgment-debtors treated as fully discharged. The Subordinate Judge has not correctly appreciated the law applicable to cases of this character. It is well settled that while the relation of Pleader and client continues, the Pleader cannot as against his client acquire absolutely a beneficial interest in or title to the subject-matter of the litigation antagonistic to that of his client; in the language of the framers of Section 88 of the Indian Trusts Act, 1882, a legal adviser, who under such circumstances gains a pecuniary advantage, must hold for the benefit of his client the advantage so gained. The reason for this rule is obvious; no person in the position of a Pleader, who rightly enjoys the confidence of his client, can be allowed to derive any benefit to the detriment of his client by reason of information acquired during the course of his employment. In Hobday v. Peters (1860) 28 Beav. 349 : 29 L.J.Ch. 780 : 2 L.T. 590 : 6 Jur. (N.S.) 794 : 8 W.R. 512 : 54 E.R. 400 : 126 R.R. 162 a mortgagor consulted solicitor who turned her over to his clerk to assist her gratuitously. The clerk by reason of information derived during such consultation, bought up the mortgage for less than half the amount. It was ruled by Romilly, M.R., that he was a trustee for the benefit of the mortgagor. In Macleod v. Junes (1883) 24 Ch. D. 289 : 53 L.J. Ch. 145 : 49 L.T. 321 : 32 W.R. 43 a solicitor who had purchased securities given by his client for smaller sums than the amount secured, was not allowed to hold the purchased securities as a security to

himself for a larger sum than the amount which he had expended in making the purchase. But as the Court had a discretion with regard to the allowance of interest in such cases, the solicitor was allowed five per cent. on the sum he had expended in making the purchase. Macleod v. Jones (1884) 32 W.R. 660 : 53 L.J. Ch. 534 : 50 L.T. 358 Unworth"s Trust, Be (1865) 2 Dr. & Sm. 337 : 13 W.R. 448 : 62 E.R. 649 143 R.R. 150 and Douglas v. Culverwell (1862) 4 De G.F. & J. 20 : 3 Giffi. 251 : 5 L.T 484 : 31 L.J. Ch. 65 & 543 : 10 W.R. 189 &327 : 6 L.T. 272 : 45 E.R. 1089 : 135 R.R. 11. The leading decision on the subject is that of Carter v. Palmer (1842) 8 Cl. & Fin. 657 : 11 Bligh (N.S.) 397 : 8 E.R. 256 : 54 R.R. 145, where the House of Lords ruled that the employment of Counsel as Legal Adviser disqualified him from purchasing for his own benefit charges on his client"s estates without provision, and that even though the confidential employment ceases, the disability continues as long as the reason on which it is founded continues to operate. Broun v. Kennedy (1864) 4 De G.J & S. 217 : 33 L.J.Ch. 71 & 342 : 9 L.T. 302 & 736 : 10 Jur. (N.S) 141 : 12 W.R. 224 & 360 : 46 E.R. 901 : 140 R.R. 47 : 33 Beav. 133 : 9 Jur. (N.S.) 1163; Pisani v. Attorney-General (Gibraltar) (1874) 5 P.C. 516 : 30 L.T. 729 : 22 W.R. 900; MacPherson v. Watt (1878) 3 A.C. 254; Luddy"s Trustee v. Peard (1886) 33 Ch.D. 500 : 55 L.J.Ch. 884 : 55 L.T. 137 : 35 W.R. 44; Rhodes v. Bate (1866) 1 Ch. 252 : 35 L.J.Ch. 267 : 12 Jur. (N.S.) 178 : 13 L.T. 778 : 14 W.R. 292 and Austin v. Chambers (1838) 6 Cl. & Fin. 1 : 7 E.R. 598 : 49 R.R. 1. These principles have been recognised and applied in a variety of oases in Indian Courts. Fuzeelun Beebee v. Omdah Beebee 10 W.R. 469 : 11 B.L.R. 60n; Nundeeput Mahta v. Mr. Alexander Shaw Urquhart 13 W.R. 209 : 4 B.L.R.A.C. 181; Subbarayudu v. Kotayya 15 M. 389 : 5 Ind. Dec. (N.S.) 623; Aghore Nath Chuckerbutty v. Ram Churn Chuckerbutty 23 C. 805 : 12 Ind. Dec. (N.S.) 535 and Goshain Jug Roop Geer v. Chingun Lal 2 N.W.P.H.C.R. 46. These cases, however, do not support the view taken by the Subordinate Judge. Assume that a decree for Rs. 10,000 has been purchased, by the Pleader for the judgment-debtor, from the decree-holder for Rs. 5,000. On principle and on the authorities, the Pleader holds the decree assigned to him in trust for his client, and, if called upon by his client to do so, is bound to assign the decree to him. But no Court will decree such re-conveyance except upon equitable terms. It is impossible on any conceivable principle to justify the position that the effect of the assignment to the Pleader is forthwith to extinguish the judgment-debt and to release the judgment-debtor from liability. In the case before us, such of the judgment-debtors as have entered appearance have not offered to bring into Court the sum which, according to their own case, the Pleader had paid for the purchase of the decree. An additional difficulty has been created by the fact that there are several sets of judgment-debtors, whose liabilities are apparently distinct under the decree and who have from time to time paid different sums in reduction of their respective liabilities. Under these circumstances, it is not practicable in these proceedings to go behind the decree and to alter the liabilities of the parties, after investigation of the sum which would be equitably payable by the judgment-debtors to the assignee of the decree before they can obtain a re-conveyance thereof. We hold accordingly that this appeal must be allowed and the order of the Subordinate Judge set aside. The assignee (the appellant before us) will be entitled to proceed with the execution of the decree and the execution

proceeding will stand revived for that purpose. No steps, however, will be taken in execution till the 1st January 1918, so that the judgment-debtors may have ample time to institute, if they are so advised, a suit against the assignee of the decree and her husband to obtain a transfer of the decree in their own favour, on proof of the allegations they have made and upon payment of such sum as the Court may determine. The appellant is entitled to her costs both here and in the Court below. We assess the hearing fee at five gold mohurs in this Court.