(1868) 02 CAL CK 0001

Calcutta High Court

Case No: Miscellaneous Appeals No. 44 of 1867

Deen Dyal Sahoo		APPELLANT
	Vs	
Radha Muddun Mohun Doss and Others		RESPONDENT

Date of Decision: Feb. 3, 1868

Judgement

Macpherson, J.

It appears that there were several decrees against the judgment-debtor in this case, and that a sum of Rs. 29,000 and odd had been paid into Collector"s hands as belonging to the judgment-debtor, arising from a surplus upon a sale of an estate belonging to him for arrears of Government revenue. S. 270 of Act VIII of 1859 directs that, whenever property is sold in execution of a decree, the person on whose application such property was attached shall be entitled to be first paid out of the proceeds thereof, notwithstanding any subsequent attachment of the same property by another party in execution of a prior decree. One of the judgment-creditors having attached, in execution of his decree, the money in the hands of the Collector, for Rs. 12,000, contended that he was entitled to have his decree satisfied in preference to the other execution-creditors. It was contended that as the property was money in the Collector"s hands, arising, not from the sale of property in execution of the decree, but from the surplus of the proceeds of a sale for arrears of Government revenue, the case did not fall within that section, and that consequently the plaintiff, who first attached the money in the Collector"s hands for the Rs. 12,000 decreed to him, was not entitled to be satisfied out of it in preference to the other execution-creditors. The other decree-holders also applied to have their claims satisfied out of the Rs. 29,000, but there was not sufficient to satisfy them all. Before it was decided what amount each of the creditors was entitled to be paid out of the fund, a difficulty arose, in consequence of its appearing that the estate which had been sold for arrears of Government revenue had stood in the name, not of the judgment-debtor, but in the name of a third person. The execution-creditor who had first attached the money was therefore directed to bring a suit to try whether the property which was in the hands of the Collector was or was not the property of the judgment-debtor. That suit was decided in

favor of the plaintiff; and it was held that the property was liable to satisfy one or more of the decrees; but several applications having been made to the Judge by the several execution-creditors, the Judge directed the Principal Sudder Ameen to take up all the cases together. It appears to me that the object of that order was that, upon hearing all the parties, the Principal Sudder Ameen should decide whether the creditor who had first attached the property was entitled to have the whole amount of his decree satisfied in preference to the others, or whether all the creditors were entitled to be paid pari passu. The Principal Sudder Ameen, in giving judgment, stated that, in his opinion the money not having arisen from the sale of property in execution, the judgment-creditor who first made the attachment was not entitled to have the whole amount of his decree satisfied, but was only entitled to he paid pro rata, thereby meaning that, having regard to the other execution-creditors, he was to have only his fair proportion of the property attached. Slow it appears to the that all the execution-creditors were proper parties before the Court for the purpose of determining whether the first execution-creditor was entitled to be paid the full amount of Rs. 12,000, or whether the other decree-holders were entitled to be satisfied in proportion to the amounts of their several decrees. There does not appear to be any express provision in the CPC as to how several execution-creditors, who have separate claims to have their decrees satisfied out of property which has been attached in execution, are to come in and have the matter decided between them. But there must he some mode of doing it; for instance, suppose all the execution-creditors, who claimed subsequently to that one who had first attached the property, had said: "It is true that you, the first execution-creditor, did attach the property first, but your judgment was a fraudulent one; it was a judgment in collusion with the judgment-debtor, and you attached the property under that decree, not for the purpose of satisfying a bona fide debt due to you, but for the purpose of protecting the property from the other decree-holders for the benefit of the judgment-debtor." There must be some mode of trying such a question between the several claimants in the Court out of which the execution issued. Such a question could not properly be tried merely between the execution-creditor who first attached the property and the judgment-debtor, without giving the other judgment-creditors the power of coming in and being heard upon the question of collusion. The Judge having directed the Principal Sudder Ameen to hear all the cases together, substantially made all the execution-creditors parties to the hearing. The question was not one to be determined in each of the suits between the parties to such suit alone; but it was a question between all the execution-creditors as to how the money attached in one of the suits was to be distributed. It was not therefore an appealable case within s. 11, Act XXIII of 1861.

2. The Principal Sudder Ameen heard all the cases together, and made separate orders in each suit, in which he awarded the money attached to be paid to the several judgment-creditors in proportion to the amounts of their several decrees. If each of those orders was merely between the execution-creditor and the judgment-debtor in the particular suit it was wrong, because, as between them, if there had been no other execution-creditors, the judgment-creditor ought to have been paid the whole amount of

his decree, the Rs. 29,000 being more than sufficient to satisfy the whole of it. It was in consequence of the other execution-creditors having claimed to be paid, that the claim of the creditor who had first attached the money to be paid the whole amount of his decree was disputed. It appears to me that the Principal Sudder Ameen, whether ha was right in his decision or not, which is a point not necessary to be decided now, was not correct in drawing up separate orders in the separate suits. He ought to have drawn up one order in all the suits which were heard together under the order of the Judge, and by that order to have adjudicated upon the several rights of the several execution-creditors to be paid out of the moneys attached. If the order had been drawn up in that manner, it would not have been appealable under s. 11, Act XXIII of 1861. The CPC enacted that there should not be any appeal from an order passed in execution of a decree, but that enactment was altered by s. 11, Act XXIII of 1861, which gives an appeal upon all questions relating to the execution of a decree arising between the parties to the suit in which the decree was passed. Now, the several appellants and respondents were not parties to any one suit, but were severally parties to several suits in which the separate decrees were obtained. Under the order of the Judge, they all become parties to one hearing as to the mode in which the funds attached should be distributed. The appeals are not appeals simply between the parties to the suit in which any of the decrees were obtained, but between those parties and the plaintiffs in other suits.

3. Can we then in each of these appeals order all the respondents who were not parties to the several suits to he struck out, and try each of the appeals separately as an appeal between the execution-creditors and the judgment-debtor in the suit, omitting all the other parties? It appears to me that the Principal Sudder Ameen was right in hearing the case of all the claimants together, and that the several orders were substantially only one order made upon one hearing in one case to which all the execution-creditors in the several suits were parties, and consequently that it was an order from which no appeal would lie. The respondents in each of these appeals having been properly made respondents, they cannot be struck out, upon the ground that they ought never to have been made respondents. It appears to me therefore that in these cases no appeal lies.

4. The whole of the appeals will be dismissed with costs.

Seton-Karr, J.

5. I am of the same opinion. The learned Chief Justice has so clearly stated the facts, that it is unnecessary for me to recapitulate them. I was one of Division Court which refused to accede to the motion brought before us, praying that the Court would exercise its alleged power of interference under the 15th section of the High Court Act. Nothing that I have heard today leads me to think that we were at all wrong in refusing so to exercise any interference. At that time we stated that it seemed tolerably clear that the petitioner had a remedy by appeal. I am still of opinion that, if the question had been confined to a simple question between the judgment-creditor and the original debtor, and if it had not embraced or affected the interests of other parties, there would have been an appeal to

the High Court, whether the appeal had been brought by the judgment-debtor objecting to something as too favorable to the creditor, or by the judgment-debtor in respect to something which affected the judgment-debtor alone. But, after considering the various sections of the Code applicable to such proceedings, I do not find that there is any power given to us to interfere in appeal between rival decree-holders. I think with the learned Chief Justice that it is not now competent to us to strike out the names of the rival decree-holders who have been made respondents, and then to decide a question which, though apparently limited to one between the first decree-holder and the original debtor, in reality seriously affects and alters the position, rights, and claims of other rival decree-holders.

6. The judgment of the Full Bench in Misri Kooer v. Maharaja Maheswar Buksh Singh Ante, p. 13 rules that there is no appeal from an order made under ss. 270 and 271 of Act VIII of 1859, as regards the application and the distribution of the proceeds of property sold in execution under the decree of a rival decree-holder. I do not lose sight of the facts that, in this case, the property in deposit does not arise out of a sale made in execution of a decree, but out of a sale for arrears of Government revenue. But I think the same analogy applies; and, at any rate, as I am not able to find that there is any appeal given to parties to this Court by any express terms of section of the Code fairly construed, I must come to the conclusion that there is no appeal.

7. I think it might possibly be convenient, as stated by my learned colleague Jackson, J., who referred this case for the decision of a Full Bench, if the Courts were empowered to array rival decree-holders and to decide questions arising between them in execution of decrees. That, however, would be a question for the Legislature; and, in this case, the first decree-holder (the appellant before us) might have had his remedy by including all the rival decree-holders in a separate and regular suit to have his right declared that the property should remain in deposit in the Collectorate, or that he should be entitled to be first paid off in full.

Jackson, J.

8. I am also of the same opinion. It appears to me quite impossible to regard the question mooted in this appeal as being in any sense a question between any decree-holder and the judgment-debtor; it is, it seems to me, wholly a question between, rival decree-holders. The appellant has come into this Court confessedly to endeavour to induce the Court to exercise its power, whether appellate or supervisory, to get rid of an order to his prejudice and in favor of other decree-holders. The Code of Civil Procedure, as pointed out by my Lord, does not contain any specific rules for bringing together into one cause and hearing the claims of several decree-holders, although it is manifest, from a consideration of the ss. 270, 271, and 272, that many questions between such parties must arise, and the Court is empowered to hear and determine them. And so, in like manner, in respect of questions arising under s. 237,--questions arise, but no mode of procedure for determining them is laid down. In the absence of any such definite

procedure, the Principal Sudder Ameen, although he had first ordered that these several cases should be brought up at once and heard together, has found no other course as to recording his decision, but that of writing down a copy of the decision at which he arrived on each one of the cases between the several decree-holders and the judgment-debtor, and this accident of form, it seems to me, has probably suggested the notion that the cases may be looked upon and dealt with as isolated cases between each decree-holder and the judgment-debtor; but that, it seems to me, is a mere form, and we should be binding ourselves to the substance, if we attempted to deal with the case in that way. Whatever the advantages or disadvantages may be in the matter of taking up appeals, we are bound by the Letters Patent of our Court; and the 16th clause expressly provided that this Court shall exercise appellate jurisdiction in such cases as are subject to appeal to the High Court by virtue of any laws or regulations in force. We cannot go beyond that clause. S. 364 of the CPC clearly provides that "no appeal shall lie from any order passed after decree and relating to the execution thereof, except as hereinbefore expressly provided;" and reference was there made to s. 283 of the Code. That s. 283, which gave the Courts, in execution proceedings, power to determine certain questions between the parties to the suit, and which provided appeals in these cases, has been expanded into s. 11, Act XXIII of 1861. By the terms of the latter section, Courts in execution of decrees have received somewhat larger powers in the determination of questions between parties to the suit. Wherever the Courts have received extension of original powers, in those cases the appellate jurisdiction has also been extended. But as this is not, it seems to me, a question in any sense between the parties to the suit, it is not a question under s. 11, and the appeal is consequently not allowed.

Macpherson, J.

9. I quite concur that, as regards the rival decree-holders in these cases, there is no appeal. But as regards the actual judgment-debtor, I still incline to the opinion which I expressed in referring the case, that the appeal lies in each case as against him alone, the order appealed from being solely between the parties to the suit in which the order was made.

Hobhouse, J.

10. I am of the same opinion as the learned Chief Justice and my learned colleagues Seton-Karr and Louis Jackson, JJ. The material facts are that in the Court of the Principal Sudder Ameen there were several decree-holders holding decrees against one and the same judgment-debtor. There was also a sum of money payable to the judgment-debtor in the hands of an officer of Government, within the meaning of s. 237 of the Coda of Civil Procedure. Each of the decree-holders claimed a portion of that sum in satisfaction of his decree, and the aggregate of the claims of all the decree-holders was in excess of the sum in deposit. The Principal Sudder Ameen lumped all the decrees together, and passed one and the same order on all of them, and by that order, given, as I should suppose, under s. 242, declared that each decree-holder should receive a part of the sum

of money in question rateably according to the amount of his decree. Certain of the decree-holders now appeal, and the substantial relief they claim is that each should be paid his decree in full, as far as the money in deposit will go, according to the priority of attachment, and to each appeal the rival decree-holder as well as the judgment-debtor are made parties.

11. The question before us is whether such an appeal will lie.

12. I agree that this was not a procedure under s. 270 of the Act. If it had been, an appeal would certainly have been barred under the Full Bench ruling to be found in Misri Kooer v. Maharaja Maheswar Buksh Sing Ante, p. 13.

13. I agree also that there is no precise procedure laid down, and that yet, when all the decree-holders were before the Principal Sudder Ameen, at one and the same time, praying for execution of their several decrees under ss. 237 and 242 of the Act, the Principal Sudder Ameen was bound to pass an order on the prayer of each one of the applicants. The Principal Sudder Ameen did pass such an order, and this was "an order passed after decree and in execution thereof." Then s. 364 says that no appeal shall lie from any such order, except as expressly provided, and s. 11, Act XXIII, 1861, only modifies s. 364 in so far as regards questions between parties to a suit.

14. Now, here, the question is not one between parties to the suit; it is substantially and really a question between rival decree-holders, a question as to whether each shall receive certain moneys according to priority of application for execution of decree, or whether all shall receive rateably; and the test is this that, if we were to give the appellants the relief they ask, we should have to decide as between each of them as a rival decree-holder, and not as between each of them and their common judgment-debtor, who has no voice and no interest in the question in dispute. For these reasons, I hold that no appeal lies in the case before us.