

APPELLATE CIVIL.

Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Batchelor

ANANT VINAYAK GOKARN (ORIGINAL APPLICANT AND TRANSFEREE OF DECREE), APPELLANT, v. NAGAPPA SUBRAYA (ORIGINAL JUDGE. December 16, 1907. DEBENTOR), RESPONDENT.*

Civil Procedure Code (Act XIV of 1882), section 232, clause (b)—Decree directing separate amounts with separate sets of proportionate costs to be recovered against defendants—Transfer of the decree in writing to one of the defendants—Application by the transferee to recover the amount due by the other defendant.

A decree directed that a certain sum with proportionate costs be recovered against N and a certain other sum with proportionate costs be recovered against A. Subsequently A took a transfer of the decree in writing and applied for execution of the decree against N to the extent of the sum decreed against him. The application having been rejected under section 232, clause (b), of the Civil Procedure Code (Act XIV of 1882).

Held, reversing the order, that section 232 clause (b) of the Civil Procedure Code (Act XIV of 1882) was not applicable. Though the direction against N and the separate direction against A were contained on one and the same piece of paper and were passed in the same suit, still for all that they were decrees for separate sums of money and might equally well have been passed in separate suits. The fact of their being on one piece of paper cannot control the matter.

SECOND appeal from the decision of C. C. Boyd, District Judge of Kárwár, confirming the order of K. R. Natu, Subordinate Judge of Kumta, in an execution proceeding.

One Kamakshibai, wife of Narayan Ramchandra, obtained a decree against (1) Nagappa Subraya and (2) Anant Vinayak Gokarn directing that "the plaintiff should recover from the defendant No. 1 Rs. 90 and proportionate Court costs Rs. 11-5-3, and also from the defendant No. 2 Rs. 30 and proportionate Court costs Rs. 3-12-4." Subsequently defendant 2 obtained a transfer of the decree in writing and applied for execution against defendant 1 for the recovery of the amount decreed against him. Defendant 1 contended, *inter alia*, that the transfer to defendant 2 was unjust and fraudulent.

* Second Appeal No. 419 of 1907.

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The Subordinate Judge found that the transfer to defendant 2 was invalid under proviso (b) of section 232 of the Civil Procedure Code (Act XIV of 1882) and he dismissed the application observing as follows:—

The proviso is not applicable only to cases where the decree for money against several persons is against them *jointly*: to say so would be to insert the word 'joint' before the words 'decree for money' in the proviso. Such an implied insertion is not warranted by the wording of the section nor by any decided case. Had the legislature intended to restrict the proviso to cases where the decree is jointly against several persons they would have said so expressly and would not have allowed such an important point to be gathered by implication only.

On appeal by defendant 2 the District Judge dismissed it summarily under section 551 of the Civil Procedure Code (Act XIV of 1882).

Defendant 2 preferred a second appeal.

N. A. Shiveshvarkar appeared for defendant 2 (transferee of the decree and applicant):—The view taken by the lower Courts is erroneous and not warranted by section 232, clause (b), of the Civil Procedure Code. That clause provides for cases in which decrees are passed jointly against several persons. In the present case the decree is not joint. It is in fact two decrees against two persons, though on the same paper. The object of the proviso is to impose on the assignee of a decree, who might happen to be one of the Judgment-debtors, the duty of proceeding by a suit for contribution. In the present case the assignee cannot proceed in that manner and the result would be to deprive him of all relief. Such could not have been the intention of the legislature. See *Degumburee Dabee v. Eshan Chunder Sein* ⁽¹⁾; *Lalla Bhagun Pershad v. Holloway* ⁽²⁾.

There was no appearance for the respondent (defendant 1).

JENKINS, C. J.:—This appeal arises out of proceedings in execution of a decree whereby it was directed that Rs. 90 and a sum of Rs. 11-5-3 as costs be recovered against Nagappa, the present respondent, and Rs. 30 with Rs. 3-12-4 as costs against Anant, the present appellant.

(1) (1868) 9 W. R. 230 (Civ. Rul.).

(2) (1885) 11 Cal. 393.

The appellant Anant has taken a transfer of the decree by assignment in writing and he has applied for execution of this decree against Nagappa to the extent of Rs. 90 and the Rs. 11-5-3.

His application has been rejected on the ground that it comes within clause (b) of section 232 of the Code of Civil Procedure. The clause provides that "where a decree for money against several persons has been transferred to one of them, it shall not be executed against the others."

Now the purpose of that clause was, not to deprive the transferee of a decree who might happen to be one of the judgment-debtors, of all relief, but to impose upon him the duty of proceeding by what was considered a more appropriate procedure, that is, a suit for contribution. Such a remedy is not open to the present appellant. Therefore one must see why he should be debarred from proceeding.

It is true that the direction against Anant and the separate direction against Nagappa are contained on one and the same piece of paper and were passed in the same suit. But for all that they are decrees for separate sums of money, and might equally well have been passed in separate suits; so that we do not think the fact of their being on one piece of paper can control the matter.

In our opinion the decree for money so far as it relates to the Rs. 90 and costs was not a decree against several persons but against one person, that is, Nagappa; and so far as that part of the decree is concerned, we do not think that the transfer of it to Anant comes within clause (b) of section 232 of the Code of Civil Procedure.

Therefore we hold that the decision of the District Judge was erroneous. It must, therefore, be reversed and the case sent back in order that it may be restored to the file and heard on its merits.

The costs of this appeal will be costs in the application.

Decree reversed.