

## APPELLATE CIVIL.

*Before Sir Basil Scott, Kt., Chief Justice and Mr. Justice Heaton.*

HANSA GODHAJI MARWADI (ORIGINAL DEFENDANT), APPELLANT v.  
BHAWA JOGAJI MARWADI (ORIGINAL PLAINTIFF), RESPONDENT.\*

1915.

November 10.

*Civil Procedure Code (Act V of 1908), Order XXI, rule 2—Civil Procedure Code (Act XIV of 1882), sections 244, 258—Decree—Execution—Satisfaction of the decree—Payment or adjustment not certified to the Court—Subsequent fraudulent execution.*

A decree was compromised by the parties out of Court. The payment, however, was not certified to the Court. The decree-holder having fraudulently applied for the execution of the decree,

*Held*, that the Court should not in the exercise of its duty under section 244 of the Civil Procedure Code, 1882, allow a clear case of fraud to be covered and condoned by the provisions of section 258 of the Civil Procedure Code, 1882, or Order XXI, rule 2, Civil Procedure Code, 1908.

*Trimbal Ramkrishna v Hari Laxman* (1), followed.

SECOND Appeal against the decision of Balak Ram, Assistant Judge of Poona, confirming the decree passed by D. G. Medhekar, First Class Subordinate Judge of Poona.

## Execution proceedings.

On the 13th March 1899, the plaintiff obtained a decree for Rs. 2,508 against the defendant, a minor. On the 14th March 1899, a compromise was effected for Rs. 2,000 in full satisfaction of the decretal debt. The money was paid by the minor defendant's mother and a receipt was passed which was signed by the plaintiff and attested by two witnesses. That payment was not, however, certified to the Court. The plaintiff thereafter made several applications for the execution of the decree in which he stated that there had been no adjustment. The last of these applications was made on

\* Second Appeal No. 387 of 1914.

(1) (1910) 34 Bom. 575.

1915.

HANSA  
GODHAJI  
v.  
BHAWA  
JOGAJI.

the 11th February 1911 when the Court ordered execution. The defendant contended that the decree was satisfied the day after it was passed; that the plaintiff instead of certifying the payment to the Court as was agreed upon took no steps in the matter and misrepresented that the payment had been certified.

The Subordinate Judge held that the payment had been made as alleged by the defendant, but no fraud had been practised and that under Order XXI, rule 2 of the Civil Procedure Code, 1908, the decree could be executed.

The District Judge, on appeal, confirmed the decree.

The defendant appealed to the High Court.

*Koyajee* with *J. R. Gharpure* for the appellant:—We say that under Order XXI, rule 2 of the Civil Procedure Code, 1908, the decree-holder applying for execution of the decree is bound to make true statements to the Court. It is also obligatory on him to report an adjustment if any to the Court: see *Trimbak Ramkrishna v. Hari Laxman* <sup>(1)</sup>. The Civil Court is not precluded from inquiring into the question whether an adjustment has been made or not. The trial Court has found that the receipt of payment is proved. The lower appellate Court has not gone into the question at all. Upon the facts found it is a clear case of fraud upon the Court: see *Ramayyar v. Ramayyar* <sup>(2)</sup>; *Gadadhar Panda v. Shyam Churn Nasik* <sup>(3)</sup>; *Deno Bundhu Nundy v. Hari Mati Dasse* <sup>(4)</sup>.

*B. G. Rao* for the respondent:—Though the case may be one of fraud upon the Court, that is a matter for a Criminal Court. The Civil Court will not take notice of that circumstance unless the provisions of section 258, Civil Procedure Code, 1882, or Order XXI,

<sup>(1)</sup> (1910) 34 Bom. 575 at p. 581.

<sup>(3)</sup> (1908) 12 Cal. W. N. 485.

<sup>(2)</sup> (1897) 21 Mad. 356.

<sup>(4)</sup> (1904) 31 Cal. 480.

rule 2 of Civil Procedure Code, 1908, are complied with : see *Gokul Mandar v. Pudmanund Singh* <sup>(1)</sup>.

SCOTT, C. J. :—The material facts are that on the 13th of March 1899 the plaintiff, who is the present respondent, got a decree for Rs. 2,508 with interest and costs against Hansa Godhaji, a minor. Both the parties are Marwadis. On the 14th of March the members of the caste assembled, and, as is held by the trial Court, effected a compromise for Rs. 2,000 in full satisfaction of the decretal debt, and, as the first Court holds, the money was paid by the appellant's mother and a receipt was passed which was signed by the plaintiff and attested by two witnesses. That payment was not, however, certified to the Court. On the 12th of March 1902 the plaintiff made an application for execution of his decree. According to the Code he was obliged as provided by section 235 (e) to state in writing upon his verification whether any and what adjustment had been made by the parties subsequent to the decree. He stated that there had been no adjustment. That statement was false according to the finding of the trial Court. The application for execution did not, however, proceed, because the plaintiff neglected to pay the fees and so no notice was given to the judgment-debtor who had no knowledge of the application. The judgment-debtor attained majority in 1904, and just before the expiry of three years from the date of the previous application in execution, viz., on the 10th of March 1905, the plaintiff made another application for execution in which he again made a false statement with reference to what was required to be stated as to adjustment in his application. Again he omitted to pay the fees and in consequence no notice was given to the judgment-debtor. On the 12th of February 1908 a further application was made containing a similar false statement,

1915.

HANSA  
GODHAJI  
v.  
BHAWA  
JOGAJI.

<sup>(1)</sup>(1902) L. R. 29 I. A. 196 at p. 202.

1915.

HANSA  
GODHAJI  
v.  
BHAWA  
JOGAJI.

and that also was not proceeded with by reason of the plaintiff not paying the fees. On the 11th of February 1911 when the period of twelve years was about to expire within which it was necessary that the decree should be executed, if anything remained still to be paid, the present application was made, and again the same false statement was made by the plaintiff. This time, however, he had to pay the fees and the appellant received notice of the application. The execution has been ordered by both the trial Court and the District Court by reason of the provisions of the 3rd paragraph of Order XXI, rule 2, which corresponds to the old section 258. The trial Court came to a definite conclusion that in the application which it granted the judgment-creditor was trying to obtain, and was in fact obtaining, fraudulent execution of his decree which had already been satisfied. The Assistant Judge in the District Court came to the conclusion that, whether or not the payment had been actually made, it was not necessary to determine, although there was evidence on the record on the point; because by reason of Order XXI, rule 2, the Court could not recognize the payment or adjustment.

This question has already been considered in this Court in the case of *Trimbak Ramkrishna v. Hari Laxman* <sup>(1)</sup> in which the judgment of my learned colleague gives cogent reasons for holding that the Court should not in the exercise of its duty under section 244 allow a clear case of fraud to be covered and condoned by the provisions of section 258 or Order XXI, rule 2. It appears to us that the provisions of Order XXI, rule 11, clause (e), which have been brought to our notice by counsel for the appellant, strongly confirm the conclusion indicated in the case referred to. A fraud, as is admitted in argument by the pleader for

<sup>(1)</sup> (1910) 34 Bom. 575.

the respondent, has, if the findings of the first Court are upheld in appeal, been clearly committed upon the Court in the application for execution by reason of the false statements made by the judgment-creditor, and we cannot permit a litigant by means of proved false statements to obtain an unjust order from the Court in execution.

We, therefore, set aside the decree of the District Court and remand the case for trial on the question whether the payment was actually made or not as found by the trial Court and for disposal of the application with reference to the remarks in this judgment.

Costs will be costs in the appeal.

*Decree reversed.*

J. G. R.

## APPELLATE CIVIL

*Before Sir Basil Scott, Kt., Chief Justice and Mr. Justice Beaman.*

SITABAI BHRATAR RAGHUNATH VYANKATESH VAIDYA (ORIGINAL PLAINTIFF), APPELLANT *v.* LAXMIBAI BHRATAR VYANKATESH VAIDYA AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.\*

1915.

November 30.

*Civil Procedure Code (Act V of 1908), section 16 (d)—Maintenance, suit for—Charge of maintenance—Right or interest in immoveable property—Jurisdiction.*

Plaintiff S filed a suit in Poona Court against her daughter-in-law L (defendant No. 1) and her father (defendant No. 2) both of whom resided in a native state beyond the jurisdiction of the Court, for a declaration that she was entitled to a maintenance allowance and sought to make the same a charge on the immoveable property of L within the jurisdiction of the Court. The lower Court held that it had no jurisdiction to try the suit as the claim for maintenance was not one for the determination of any right to or interest in the immoveable property as required by clause (d) of section 16 of the Civil Procedure Code. The plaintiff having appealed,

*Held*, that the Court had jurisdiction to proceed against defendant No. 1 as the question whether or not plaintiff was entitled to a right or interest

\* Appeal from Order No. 49 of 1914.