APPELLATE CIVIL

1952
Feb. 8

Mr. Justice Rajadhyaksha and Mr. Justice Vyas.

VALCHAND GULABCHAND SHAH (ORIGINAL JUDGMENT-DEBTOR), APPELLANT *v.* MANEKBAI HIRACHAND SHAH AND ANOTHER (ORIGINAL JUDGMENT-CREDITORS), RESPONDENTS.*

Civil Procedure Code (Act V of 1908), O. XXI, r. 15—Joint decree—Judgment-debtor paying part of decretal amount to one decree-holder without authority from others—Whether decree is discharged to extent of share of such decree-holder in decree—Right of remaining decree-holders to execute whole decree notwithstanding payment.

Payment to one of several joint decree-holders is not a payment to all (unless he is authorised to receive such payment on behalf of all), and does not amount to a *pro tanto* satisfaction even to the extent of what is regarded as the share in the decree of the decree-holder receiving payment.

Held, therefore, the other decree-holders cannot be compelled to seek execution only in respect of their own share in the decree; they can execute the decree to the full extent.

Tamman Singh v. *Lachman Kunwari,*[1] and *Umrao Beg* v. *Mukhtar Beg,*[2] distinguished.

Kumaid Kumar Singh v. *Amar Nath Singh,*[3] *Pitchakkuttiya* v. *Doralswami,*[4] and *Kartar Singh* v. *Gurdial Singh,*[5] approved.

Sultan Moideen v. *Savalayammal,*[6] *Tarruch Chunder* v. *Divendra Nath,*[7] and *Surendra Kumar* v. *Abhay Kumar,*[8] differed from.

Pariasami v. *Krishna Ayyan,*[9] *Gurusamy Goundan* v. *Sivanmalai Goundan,*[10] *V. N. Muthuswamy* v. *V. S. Narasimha,*[11] *Hanumanthappa* v. *Seethayya and Co.*[12] *Fatmabai* v. *Tukabai,*[13] and *Kaka Ram* v. *Haveli Ram,*[14] referred to.

LETTERS PATENT APPEAL against the decision of Shah J. in First Appeal No. 284 of 1949 from the order passed by R. M. Kulkarni, Esquire, Civil Judge, Senior Division, at Sholapur.

Execution proceedings.

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* Letters Patent Appeal No. 44 of 1950.

(1) (1904) 26 All. 318.
(2) (1923) 45 All. 401.
(3) (1942) 21 Pat. 322.
(4) [1925] A. I. R. Mad. 230.
(5) [1942] A. I. R. Pesh. 58.
(6) (1892) 15 Mad. 343.
(7) (1883) 9 Cal. 831.
(8) [1930] A. I. R. Cal. 78.
(9) (1902) 25 Mad. 431.
(10) (1932) 56 Mad. 316.
(11) [1934] A. I. R. Mad. 330.
(12) [1949] A. I. R. Mad. 790.
(13) [1945] Nag. 242.
(14) [1930] A. I. R. Lah. 814.

Hirachand (plaintiff No. 1) and his son Manoranjan (plaintiff No. 2) filed a suit against Hirachand's two brothers Shivlal and Walchand (defendants Nos. 1 and 2 respectively) for an account of certain property which they alleged had been entrusted to the two defendants for management. During the pendency of the suit, plaintiff No. 1 died and his widow Manekbai and his minor son Chandrashekhar were brought on record as his heirs and legal representatives and were impleaded as plaintiffs Nos. 1A and 1B to the suit.

During the course of the suit the parties referred their dispute to arbitration. The arbitrator made an award and a decree in terms of the award was passed on August 1, 1945. Under that decree the defendants were asked to deliver to the plaintiffs possession of share certificates mentioned in Schedule A to the plaint worth Rs. 13,842, ornaments described in Schedules B and C worth Rs. 13,574 and Rs. 18,550 respectively, silver ware worth Rs. 150 and carts and bullocks worth Rs. 1,800. They were further directed to deliver possession of certain promissory notes described in Schedule 'F' worth Rs. 27,044, and excluding the plaintiffs' share in the moneylending business of the joint family of which accounts were ordered to be taken it was declared that the plaintiffs were entitled to recover a sum of Rs. 10,000 from the defendants.

After the death of plaintiff No. 1, there were disputes between plaintiff No. 1A and plaintiff No. 2 and it appeared that the plaintiff No. 2 started supporting defendants' case. The defendants having failed to satisfy the decree, plaintiff No. 1A filed a darkhast to execute the decree on behalf of herself and her minor son. The application for execution was made under O. XXI, r. 15 of the Civil Procedure Code for and on behalf of all the decree-holders. After an order of attachment was issued by the executing Court, defendant No. 2 appeared and contended *inter alia* that the ornaments mentioned in Schedules B and C had, before the date of the Darkhast, been already handed over to plaintiff No. 1A and plaintiff No. 2, and that Rs. 10,000 had been paid to plaintiff No. 2 at the time of his marriage.

The executing Court found that both the ornaments mentioned in Schedules B and C and the sum of Rs. 10,000 were received by plaintiff No. 2, that plaintiff No. 2 had authority from plaintiff No. 1A to receive ornaments mentioned in Schedule C and Rs. 10,000 but not the ornaments mentioned in

1952

VALCHAND GULABCHAND v. MANEKBAI HIRACHAND

Shah J.

Schedule B, and, that there was a discharge of the decree to the extent of the two items received under authority but the decree was not discharged in respect of the last item of ornaments described in Schedule B. Therefore, it directed the execution to proceed for the recovery of Rs. 56,410.

Two appeals were filed against this order to the High Court, one by defendant No. 2 and the other by plaintiffs Nos. 1A and 1B. Defendant No. 2 contended in his appeal that delivery of ornaments mentioned in Schedule B to plaintiff No. 2 should have been held to be a satisfaction of the decree to that extent or at any rate to the extent of the share of plaintiff No. 2 in the decree. On behalf of plaintiffs Nos. 1A and 1B, it was contended in their appeal that the payment of Rs. 10,000 and delivery of ornaments mentioned in Schedule C should not have been held to operate as a satisfaction of the decree.

Both the appeals were heard together by Shah J. who delivered the following judgment on April 20, 1950:—

SHAH J. Hirachand Gulabchand Shah and his son Manoranjan Hirachand Shah filed suit No. 936 of 1943 in the Court of the Civil Judge, Senior Division, at Sholapur, for a decree for an account of certain property, which they alleged, had been entrusted to the defendants for management, and for an order of transfer of certain shares and ornaments and for an order for payment of mesne profits and costs of the suit.

The suit was filed against Shivlal Gulabchand and Walchand Gulabchand, who were two brothers, and were also the brothers of Hirachand, plaintiff No. 1. During the pendency of the suit Hirachand, plaintiff No. 1, died, and his widow Manekbai and his minor son Chandrashekhar were brought on record as heirs and legal representatives and were impleaded as plaintiffs Nos. 1A and 1B to the suit. Chandrashekhar being a minor was represented by his mother Manekbai as his next friend. During the pendency of the suit the parties referred their dispute to arbitration and an award was made and a decree was ultimately passed on that award on August 1, 1945. Under that decree the plaintiffs were entitled to take possession of share certificates and ornaments mentioned in schedules B and C attached to the plaint and also of some silver-ware and Government promissory notes. In the alternative they were awarded a sum of Rs. 27,044. The defendants were also directed to render an account of the money-lending business and to pay a sum of Rs. 10,000 to the plaintiffs. Manoranjan, plaintiff No. 2, is the stepson of Manekbai. It appears from the evidence that there were disputes between him and Manekbai after the death of his father Hirachand, which led to criminal proceedings. Manoranjan has admittedly started living with his uncle Walchand, defendant No. 2, and appears to be supporting the defendants' case. The defendants having failed to satisfy the decree, Manekbai filed darkhast No. 883 of 1946 in the Court of the Civil Judge, Senior Division, at Sholapur, to execute the decree on behalf of herself and

her minor son Chandrashekhar. The darkhast application was filed under the provisions of O. XXI, r. 15, of the Civil Procedure Code, for and on behalf of all the decree-holders. After an order for attachment of property was issued by the executing Court, defendant No. 2 appeared before the Court and contended that the darkhast filed by Manekbai was not maintainable, inasmuch as plaintiff No. 2, Manoranjan, had not joined in filing the darkhast, that the ornaments mentioned in schedules B and C had before the date of the darkhast been handed over to Manekbai and Manoranjan, that Rs. 10,000 had been paid to Manoranjan at the time of his marriage and that payment was made in the Nizam currency and consequently the liability to pay the amount of Rs. 10,000 was duly satisfied, that the decree-holders had agreed to take one land belonging to the defendants situate at Soregaon in satisfaction of the decree to the extent of Rs. 25,000. According to defendant No. 2 this agreement had taken place in the presence of the arbitrator Ratanchand in December 1946.

The learned Civil Judge, Senior Division, at Sholapur, held that the darkhast was maintainable without joining Manoranjan, plaintiff No. 2, and that it was so maintainable under the provisions of O. XXI, r. 15, of the Civil Procedure Code. He further held that the Court was entitled to recognise the satisfaction of the decree to the extent of Rs. 10,000 and the ornaments mentioned in Schedule C, inasmuch as plaintiff No. 2, Manoranjan, had admitted in his deposition before the Court that he had received the amount of Rs. 10,000 and the ornaments. He further held that the agreement relating to the conveyance of the Soregaon land in partial satisfaction of the decree under execution was not proved and that the decree must be marked satisfied only to the extent of Rs. 10,000 and ornaments mentioned in schedule C, and that the minor son, Chandrashekhar, was not bound by the alleged payment and adjustment in the absence of leave of the Court. The learned Judge thereupon directed the darkhast to proceed for the recovery of Rs. 56,410 and proportionate costs.

Against the order of the learned Civil Judge, Senior Division, at Sholapur, two appeals have been filed to this Court. Defendant No. 2 has contended in First Appeal No. 284 of 1949 that the Court of first instance was wrong in holding that the agreement relating to the transfer of Soregaon land was not proved. He has further contended that the delivery of ornaments mentioned in schedule B to Manoranjan, plaintiff No. 2, and accepted by him should have been held to be a satisfaction of the decree to that extent, or in any case the acceptance of those ornaments by Manoranjan operated as a satisfaction of the decree to the extent of his share therein. On behalf of Manekbai and the minor Chandrashekhar it has been contended in appeal No. 547 of 1949 that the Court was wrong in holding that the payment of the amount of Rs. 10,000 and the delivery of the ornaments mentioned in schedule C to plaintiff No. 2 operated so as to deprive them of the right to execute the decree according to its tenor.

Now, the evidence in support of the case that the decree-holders agreed to accept the Soregaon land in part satisfaction of the amount payable under the decree, is wholly insufficient to hold the agreement

1952

VALCHAND GULABCHAND v. MANEKBAI HIRACHAND

Shah J.

proved. Manekbai, exh. 98, has denied that she agreed to take the Soregaon land. She denied that she even negotiated for taking over that land for a sum of Rs. 25,000. Nemchand, exh. 99, who is the uncle of Manekbai, and who appears to have acted for Manekbai in managing the affairs relating to the estate, has also denied the agreement set up by defendant No. 2. Walchand, defendant No. 2, in his deposition at exh. 68 has stated that it was settled to give the Soregaon land to the decree-holders in liquidation of the debts to the extent of Rs. 25,000, and that Nemchand and Manekbai had agreed to take that land in liquidation of their debt to the extent of Rs. 25,000. He further stated that Ratanchand had settled that the defendants should give the Soregaon land in satisfaction of the sum of Rs. 25,000 referred to in the decree. He stated in cross-examination that the decree-holders had 1/5th share in the Soregaon land, and as the defendants had paid off the debts of the family from time to time they had agreed to give up their interest in the Soregaon land, and that, therefore, the decree-holders had ceased to have any share in that land. He admitted that there was no document showing that the decree-holders had ceased to have 1/5th share in the land by reason of the alleged payment of the family debts by the defendants. He further stated that the agreement to give the Soregaon land to the decree-holders was arrived at about a month after the date of the decree, and there was a writing to evidence that settlement, which however had not been produced. Walchand, defendant No. 2, thereafter produced a document with list, exh. 72, which purported to be an agreement signed by the judgment-debtors and Nemchand, in which it was stated that the land at Soregaon was given in satisfaction of the claim of the decree-holders to the extent of Rs. 25,000. It was also stated in that document that the 1/5th share of the decree-holders in the Soregaon land had been extinguished by reason of the payment of the family debts. Now, the figure of Rs. 25,000, both in figures and letters, was admittedly written after the rest of the document was written. It was admitted by Walchand, defendant No. 2, that the figure was entered on the day next after the signatures were subscribed to that document. Ratanchand, exh. 71, stated that it was settled to give the decree-holders the Soregaon land in part satisfaction of the debt amounting to Rs. 25,000. According to him, both Nemchand and Manekbai had agreed to take the Soregaon land in part satisfaction of the amount due, and that sometime in the month of December both of them had agreed accordingly to take the Soregaon land. In cross-examination he stated that the agreement to give the Soregaon land in part satisfaction of the amount of Rs. 25,000 out of the decretal amount took place at the time when the question of taking accounts of the money-lending business arose. Manoranjan, exh. 97, stated that it was agreed between the decree-holders and the judgment-debtors that the decree-holders should take the Soregaon land in satisfaction of the amount of Rs. 25,000 which was due, which was equal in worth to Rs. 25,000 in Nizam currency. He stated that the amount of Rs. 25,000 mentioned in the document, though written in different ink was incorporated in the document at the same time when the other contents of the document were written. The decree-holders produced a copy of this document, which was said to have been given to Nemchand by the defendants, but in which the figure of Rs. 25,000

was not to be found. The learned trial Judge has taken the view that there were nothing more than negotiations between the parties and that there was no completed agreement between them. On the evidence it is not clear as to when the document was written. Whether the amount of Rs. 25,000 as the price of the Soregaon land was agreed upon by the decree-holders is not also clear. Nemchand, the uncle of Manekbai, who it is alleged, settled the agreement, was not cross-examined as to the details of the agreement or as to the circumstances under which the figure of Rs. 25,000 came to be entered in the draft writing. It is very unlikely that if the document, exh. 73, represented a completed document between the parties it should have remained in the possession of the judgment-debtors. It is admitted that the possession of the Soregaon land has not been delivered to the decree-holders, and in view of the provisions of the Bombay Tenancy and Agricultural Lands Act, LXVII of 1948, cannot be delivered because there are tenants on the land.

There is considerable discrepancy in the oral evidence as to when the agreement really took place, and I agree with the view taken by the learned Judge that on the evidence it is not established that there was a final and concluded agreement in respect of the taking of the Soregaon land in part satisfaction of the amount of Rs. 25,000 due to the decree-holders from the defendants, as set up by the defendants. Even if exh. 73 represents a completed settlement, in my view the document is inadmissible in evidence as it does not bear adequate stamp and is not registered. Exhibit 73 in terms purports to convey the Soregaon land for a consideration of Rs. 25,000. In effect the transaction incorporated therein amounted to a sale of the land and could only be admitted in evidence if it was properly stamped as a deed of conveyance and was duly registered. There is a further difficulty in the path of the defendants inasmuch as there are certain other procedural difficulties in recognizing the alleged transaction. It was the case of defendant No. 2 that the agreement was arrived at some time in September 1945, but thereafter it was never sought to be certified under the provision of O. XXI, r. 2, of the Civil Procedure Code. The judgment-debtor having failed to take any steps to have the agreement certified or recorded as part satisfaction of the decretal debt, he is not entitled to plead that as a defence to the execution of the decree after the expiry of the period provided in that behalf. In order to evade the bar of limitation it is suggested that sometime in December 1946 Nemchand and Manekbai acknowledged having entered into the agreement to take over the Soregaon land. In my view such an acknowledgment assuming that it was made cannot help the defendant to escape the bar of O. XXI, r. 2, Civil Procedure Code.

There is one more difficulty in recognition of the agreement set up by defendant No. 2. Plaintiff No. 1B, Chandrashekhar, is a minor, and he is admittedly one of the decree-holders. In so far as he was concerned his next friend Manekbai was not entitled either to enter into an agreement to adjust the decree or to accept satisfaction of the decree without the sanction of the Court under the provisions of O. XXXII, rr. 6 and 7, of the Civil Procedure Code. It is not contended that the Court's sanction was ever asked for or given. Consequently in any case the agreement,

1952

VALCHAND GULABCHAND v. MANEKBAI HIRACHAND

Shah J.

assuming that it was entered into as alleged by defendant No. 2, and exhibited as exh. 73 was admissible in evidence, Chandrashekhar, plaintiff No. 2, would be entitled to execute the decree passed by the trial Court. Consequently it must be held that the agreement to take over the Soregaon land set up by defendant No. 2 in part satisfaction of the decree must be held not proved, and in any case cannot operate as a bar to the execution petition.

The next question that arises is whether the ornaments mentioned in schedule C and Rs. 10,000 were delivered to Manoranjan. It has been admitted by Manoranjan that the amount of Rs. 10,000 and the ornaments mentioned in schedules B and C were received by him. Even though the payment of Rs. 10,000 and the delivery of ornaments were not certified under O. XXI, r. 2, of the Civil Procedure Code, within the period of limitation at the instance of the judgment-debtors, the admission made by Manoranjan at the hearing of the darkhast was treated as sufficient to comply with the provisions of O. XXI, r. 2, of the Civil Procedure Code. It is true that no period of limitation is provided for a decree-holder to certify payment or satisfaction of the decree, and no formal application is required to be made for recording the partial adjustment or satisfaction of a decree. Consequently the admission made by Manoranjan that he did receive the ornaments and Rs. 10,000 may be held to be a sufficient intimation to the Court pursuant to which the Court was entitled to record that payment in partial satisfaction of the decree.

But the question still remains whether the payment to Manoranjan, plaintiff No. 2, of the amount of Rs. 10,000 and the delivery of ornaments as mentioned in schedules B and C can be deemed to be in part satisfaction of the decree to the extent of his share in these items of property. Under O. XXI, r. 1, cl. (*1*) (*b*) provides that all money payable under a decree may be paid to the decree-holder out of Court. Of course where there are several joint decree-holders payment must be made to all, unless there is a direction to the contrary in the decree, or the decree-holder is entitled by reason of his being an agent of other decree-holders to receive the money on their behalf. If payment is made to one of the decree-holders, and he has no authority to receive it, the payment cannot operate as a satisfaction of the decree. Similarly in the case of a decree for delivery of possession of property the same principle must apply. A joint decree in favour of several persons cannot be satisfied by payment or delivery of property to one of the decree-holders, except where the terms of the decree provide otherwise.

Mr. Nadkarni on behalf of the judgment-debtors has not seriously controverted this position. But he has contended that even when the decree is a joint decree and the shares of the decree-holders are not specified in the decree, a payment of money to one of the decree-holders or delivery of property to him, when the payment of money or the delivery of property has been recorded as satisfaction of the whole or part of the decree under O. XXI, r. 2, of the Civil Procedure Code, operates as a satisfaction of the decree to the extent of the share of the decree-holder who receives the payment of the money or the property. Mr. Nadkarni contends that the payment to Manoranjan as evidenced

by the admission of Manoranjan that he had received the amount of Rs. 10,000 and ornaments, must be recorded as part satisfaction of the decree; and if thereafter it is established that the payment of the amount of Rs. 10,000 and the delivery of ornaments were received for and on behalf of all the decree-holders the decree should be held to be satisfied *pro tanto*. Mr. Nadkarni further contended that even if the judgment-debtor was unable to satisfy the Court that Manoranjan received the amount of Rs. 10,000 and the ornaments under the authority, express or implied, from the other decree-holders, the Court should direct execution of the decree only for the amount payable and the property deliverable which remains due to the other judgment-creditors, who did not receive their share of the money or the property. In support of his contention Mr. Nadkarni has relied upon certain decisions to which I will hereafter refer.

Now, apart from authority, a payment to one of several joint decree-holders whose individual rights in the subject-matter of the decree are not worked out either expressly or by necessary implication in the decree is not a payment to all and such payment cannot deprive the other decree-holders of their right to enforce the decree, because obviously if a right is given to several decree-holders to enforce compliance with the terms of the decree, it cannot be said that there has been a sufficient compliance of the terms of the decree when satisfaction has been rendered to one of the decree-holders, but not to all. The Court's direction must be complied with by rendering satisfaction to all persons who are jointly interested in the decree. The rule, however, is subject to two well recognized exceptions: (1) when the decree-holder receiving the money has authority to receive payment on behalf of all, such authority being either express or implied. This is no more than an application of the rule of the law of agency: *qui facit per alium facit per se*. The authority may arise by reason of the terms of the decree or may have been granted after the decree; as, for instance, by a power-of-attorney from other decree-holders, or even may exist by relation which subsisted between the decree-holders prior to the date of the decree, but in all cases such authority not being contrary to the provisions of an express statute like O. XXXII, r. 7, of the Civil Procedure Code, (2) when distinct shares of the decree-holders are determined and known, payment to one of the decree-holders of his shares satisfies the decree to that extent. Strictly speaking a decree envisaged by the second exception is not a joint decree; and a decree-holder who is entitled to obtain satisfaction of his right can claim it without reference to the rights of the other decree-holders. However, if a case does not fall within either of the two exceptions, the payment to one of the several decree-holders cannot be recognized as payment to all or even to the extent of the share of the decree-holder in the property received by him. The reason for the rule is clear. If the judgment-debtor is required to pay any amount to the joint decree-holders whose shares are not specified, one of them cannot say, apart from special authority traceable to the relation subsisting or arising under or after the decree, that payment to him is payment to all. It is true that under O. XXI, r. 15, of the Civil Procedure Code, the Court which is directed to execute a decree at the instance of several joint decree-holders is entitled to make an order,

1952

VALCHAND GULABCHAND v. MANEKBAI HIRACHAND

Shah J.

which it deems necessary, for protecting the interests of all the persons who have not joined in the application for execution. But such an order can be passed only for the benefit of the decree-holders who have not joined in the application for execution. Under that rule the Court may allow execution of the whole decree on terms, but it cannot compel one or more of the joint decree-holders to levy execution for a fraction of the decree. Nor can the Court at the instance of the judgment-debtor be asked to decide a dispute between the decree-holder *inter se*. If after payment to one of the joint decree-holders it is contended that there has been a satisfaction of the decree to the extent of the share of the decree-holder receiving the payment, the judgment-debtor raises a question not between the parties to the suit or other representatives arrayed on opposite sides but substantially raises a dispute between the parties arrayed on the same side. The executing Court is not competent to decide such a dispute, because it is a question which is essentially foreign to the nature of the execution proceedings. An executing Court cannot be asked to decide a question as to the shares which should be assigned to the individual decree-holders under a joint decree when the decree has not made any such provision. If the executing Court is asked to launch upon such an enquiry and does so proceed to make the enquiry, it would in effect be deciding a suit for partition between the joint decree-holders with reference to the property, which is the subject-matter of the decree primarily, and incidentally with regard to other property held jointly on the same tenure or relationship as the property which is the subject-matter of the decree.

The view which I have expressed is supported by the following authorities; *Kumaid Kumar Singh* v. *Amar Nath Singh*[1]; *Fatmabi* v. *Tukabai*[2] and *Periasami* v. *Krishna Ayyan.*[3] The exceptions that I have mentioned are supported by the following authorities; *Hanumanthappa* v. *Seethayya and Co.*[4]; *Ganesha Row* v. *Tuljaram Row*[5] and *Mahima Chandra Roy* v. *Pyari Mohan Chowdhry.*[6] Mr. Nadkarni, however, has contended that a contrary view has been taken in some other cases; and in that connection he has referred to *Tarruck Chunder Bhuttacharjee* v. *Divendro Nath Sanyal*[7]; *Sultan Moideen* v. *Savalayammal*[8]; *Tamman Singh* v. *Lachhmin Kunwari*[9]; *Umrao Beg* v. *Mukhtar Beg*[10] and *Kaka Ram* v. *Haveli Ram.*[11] Now, it is true that in *Tarruck Chunder Bhuttacharjee* v. *Divendro Nath Sanyal,*[7] it was stated that a judgment-debtor is entitled to credit for any sum paid bona fide to one or several joint decree-holders, and duly certified to the Court by the latter, and that the other joint decree-holders cannot execute the decree for more than their own share. That conclusion was arrived at on what was stated to be the effect of the previous decisions of the Calcutta High Court and the principle underlying s. 258 of the Civil Procedure Code of 1877. The learned Judges who decided that

[1] (1942) 21 Pat. 322.
[2] [1945] Nag. 242.
[3] (1901) 25 Mad. 431, F.B.
[4] [1949] A. I. R. Mad. 790, F.B.
[5] (1913) L. R. 40 I. A. 132.
[6] (1869) 2 Beng. L. R. (Appx.) 43.
[7] (1883) 9 Cal. 831.
[8] (1892) 15 Mad. 343.
[9] (1904) 26 All. 318.
[10] (1923) 45 All. 401.
[11] [1930] A. I. R. Lah. 814.

case were of the opinion that the Court was entitled to record satisfaction of the decree at the instance of one of several joint decree-holders, provided that it was for the benefit of all the decree-holders and the extent of the shares of the individual decree-holders was not in dispute. But they stated the Court ought not to recognise any payment made out of Court unless made and certified for the benefit of all, at least in cases where there was a dispute as to the extent of the shares of the individual decree-holders. They further were of the opinion that there was no logical reason why a Court was permitted to recognise payment out of Court to one of several joint decree-holders for his own benefit and not for the benefit of all of any portion of the decree in excess of that to which he is undisputedly entitled, if by reason of the provision of s. 231, (which is equivalent to the provisions of O. XXI, r. 15, of the present Civil Procedure Code) the Court was not permitted to allow one of several joint decree-holders to obtain execution of the whole decree for his own individual benefit. It is clear that on the authority of the case reported in *Tarruck Chunder Bhuttacharjee*[1] an adjustment of the decree could be recorded only where there was no dispute between the decree-holders as to their shares and the payment was received and accepted for and on behalf of all the decree-holders. Obviously in that case the payment would be deemed to have been received pursuant to an authority held on behalf of all the decree-holders, and the case is, therefore, no authority for the wide proposition suggested by Mr. Nadkarni. It is stated in that case that the judgment-debtor must have bona fide paid the money to one of several joint decree-holders and the payment must be duly certified, which could only be where there is no dispute between the decree-holders, and the payment is received for the benefit of all.

The case in *Mahima Chandra Roy* v. *Pyari Mohan Chowdhry*[2] which was referred to in *Tarruck Chunder Bhuttacharjee's case*[1] was a case in which each of the joint decree-holders had a definite share of eight annas in the decree. Execution was taken out by the two joint decree-holders, each interested in the eight annas share in the money decree and one of them thereafter died and the other received the whole amount; and it was held that that amount was received in satisfaction of half the decree and the representatives of the deceased were entitled to sue for the remaining half of the decree. In the case in *Sultan Moideen* v. *Savalayammal*[3] it was accepted without any discussion that *Tarruck Chunder Bhuttacharjee's* case[1] was an authority for the proposition that where payment is made to one of several joint decree-holders it purports to operate as satisfaction of the decree to the extent of the share to which the payee was entitled, and the decree can be executed in favour of the remaining decree-holders to the extent of the balance remaining due if the shares of the decree-holders have been ascertained and the credit is given for the payment received. In that case the decree was passed in terms of a compromise. The defendant was directed to pay the plaintiffs jointly a sum of Rs. 2,000 and interest in certain instalments. An application was filed by one of the joint decree-holders for execution of the decree for the full amount, and it was resisted on the ground that the judgment-debtor had paid out of Court Rs. 1,100 to the other decree-holder, though there was no satisfaction

[1] (1883) 9 Cal. 831.
[2] (1869) 2 Beng. L. R. (Appx.) 43.
[3] (1892) 15 Mad. 343.

1952

VALCHAND GULABCHAND v. MANEKBAI HIRACHAND

Shah J.

certified by the Court. The learned District Judge having issued execution, an appeal was preferred by the judgment-debtor. The High Court of Madras following *Tarruck Chunder Bhuttacharjee's*[1] case held that it was necessary to ascertain the share to which Appaji Chetti, the decree-holder who received the payment, was entitled to as between himself and the decree-holder who applied for execution, though it was stated that the payment made to Appaji was valid only to the extent of his share to which he was entitled. It is not clear from the report whether under the terms of the decree the shares of the decree-holders could be ascertained. *Tarruck Chunder Bhuttacharjee's*[1] case was regarded as an authority for the proposition that the payment made to one of several joint decree-holders can be held to be valid to the extent of the share of that decree-holder. Stated in that form the proposition was correct, though partially. The case in *Sultan Moideen* v. *Savalayammal* is no authority for the proposition that where the shares of the individual decree-holders are not capable of being ascertained from the terms of the decree and the payment is made to one of several joint decree-holders, it must operate as satisfaction to the extent of the share of the payee after ascertaining the share of such payee. I cannot accept the contention of Mr. Nadkarni that the Allahabad High Court has taken the view that in every case of joint decree-holders where payment is made to one of several joint decree-holders it must operate as a satisfaction to the extent of his share if the payment is certified. The two cases which have been referred to me are cases in which on special facts the Court held that the judgment-creditor, whose claim was held to be not satisfied by reason of payment to another joint decree-holder, was held entitled to levy execution in respect of his share. In *Tamman Singh* v *Lachhmin Kunwari*[2] the head-note runs thus:

"One of two joint holders of a decree under s. 88 of the Transfer of Property Act cannot alone certify satisfaction of the whole decree so as to bind the other decree-holder, though he may certify satisfaction in respect of his own interest therein. Hence where one of such decree-holders purported to certify satisfaction of the whole decree, it was *held* that the other decree-holder, who had refused to recognise the certificate, was entitled to obtain an order absolute for sale of the mortgaged property in respect of his own share of the mortgage debt."

In that case a mortgagor was alleged to have paid Rs. 1,241-2-9 to one of the joint decree-holders. Thereafter the other joint decree-holder applied for execution. It was found by the District Court in appeal that the payment alleged to have been made was collusive and that it did not bind the other joint decree-holder, and the District Court accordingly modified the order of the trial Court and granted a decree absolute in favour of the other joint decree-holder to the extent of his share in the mortgage. Against that order the judgment-debtor appealed, and the decree-holder who had applied for execution filed cross-objections. The appeal of the judgment-debtor was dismissed, and on the cross-objections the judgment contains the following observations (p. 320):

"There is an objection under s. 561 of the Code of Civil Procedure, to the effect that as the Musammat who was the applicant for an order

[1] (1883) 9 Cal. 831. [2] (1904) 26 All. 318.

under s. 89 of the Transfer of Property Act could not apply only for her own share of the decretal amount, but must apply for sale to satisfy the whole amount of the decree, the Court ought to have made an order in respect of the whole amount. We are not satisfied that there is any weight in that objection. Having regard to the *circumstances of this case*, we are unable to hold that the applicant for the order under s. 89 is entitled to such an order in respect of any amount in excess of her own share of the amount of decree. As the other decree-holder has entered satisfaction of the decree, it is for the balance of the decretal amount only that the Court can order the sale of the mortgaged property. *There is no dispute in this case as to the extent of the shares of the two decree-holders.* We are, therefore, of opinion that the Court below was right in holding that the order under s. 89 should relate only to the share of Musammat Lachhmin Kunwari in the amount of the decree."

From this it is clear that the Court decided the case on the special circumstances of the case and negatived the contention that a co-mortgagee was not entitled to levy execution only in respect of a share of a mortgage debt. It was also observed that there was no dispute as to the extent of the share of the two decree-holders. In my view the case is no authority for the proposition in the form suggested by Mr. Nadkarni. The case in *Umrao Beg* v. *Mukhtar Beg*[1] arose from a suit for partition in which there were fifteen plaintiffs and one defendant. The plaintiffs obtained a joint decree for costs against the defendant. The defendant paid the whole of the costs awarded to one of the plaintiffs, who was his sister, and she certified to the Court that she had realized the full amount of the costs awarded. It was held that it was open to the Court to direct execution only for the share of the remaining plaintiffs in the amount of the costs awarded to them. The suit in that case was one for partition and the shares as between the plaintiffs were ascertained; and the view taken in that case was that the Court was not entitled to go behind the decree for ascertaining what the shares of the plaintiffs in the amount of the costs awarded were, but it was open to the Court to examine the pleadings and to inform itself as to the precise position of the plaintiffs as they came to Court. It appears that there was no dispute between the plaintiffs as regards the shares in the costs awarded, and though in form the decree was one which was joint in favour of the plaintiffs, it was read by the Court as being a decree for specific shares in the amount of costs awarded to the plaintiffs.

In *Kaka Ram* v. *Haveli Ram*[2] the head note is as follows:—

"Where shares of the decree-holders are not specified in the decree but are not incapable of being determined, payment to one decree-holder gives a valid discharge to the extent of the share of the decree-holder to whom payment is made, and it is open to the judgment-debtor to show that the decree has been adjusted in whole or in part to the satisfaction of the decree-holder."

With respect, it is difficult to agree with that view. If the rights among the decree-holders *inter se* are ascertained or there is no dispute between

[1] (1923) 45 All. 401. [2] [1930] A. I. R. Lah. 814.

1952

VALCHAND GULABCHAND v. MANEKBAI HIRACHAND

Shah J.

them as to their shares or rights, the payment to one of the decree-holders may be regarded as a discharge of the decree to the extent of the share of the decree-holder who has received payment but not otherwise. The executing Court has, however, no jurisdiction to settle a dispute between the decree-holders *inter se*.

In my judgment payment to one of the several decree-holders, where he is not an agent of the other decree-holders and where the decree does not specify the shares of the individual decree-holders, does not satisfy the decree either wholly or even to the extent of the share of the decree-holder receiving payment. The contentions raised by Mr. Nadkarni, therefore, must fail.

Plaintiffs Nos. 1A and 1B in the Court below have contended that the view of the trial Court that the payment of Rs. 10,000 and the ornaments in schedule C to plaintiff No. 2 operated as a satisfaction of the decree *pro tanto* is wrong. Now, with regard to the ornaments mentioned in schedule C, Hirachand, the original plaintiff No. 1, stated in the plaint in paragraph 8 that the ornaments mentioned in schedules C and D of the plaint had gone to the share of plaintiff No. 2 in the division. In schedule C in the description of the ornaments it is stated "Ornaments worn on the person of Kesharba.....the following ornaments were to be given to plaintiff No. 1 for plaintiff No. 2." Then follows the description of the ornaments which are the same ornaments as referred to in schedule C. It is true that in cl. 2 of the operative part of the decree it is stated:

"The plaintiffs do take possession of the ornaments described in Schedules B and C to the plaint from the defendants. In the event of their not doing so, the plaintiffs do recover from the defendants, the price thereof as shown in Schedules B and C."

But in view of the express admission contained in the plaint by Hirachand that the ornaments mentioned in schedule C belonged to plaintiff No. 2, I do not feel justified in directing execution for the value of the ornaments in favour of plaintiffs Nos. 1A and 1B, when they have no beneficial interest in those ornaments. Even if execution is directed and the value of the ornaments recovered, that amount however must be paid to plaintiff No. 2, who on his own admission received the ornaments. In the circumstances, the view taken by the learned trial Judge refusing to direct execution in respect of ornaments mentioned in schedule C is correct.

It is true that the learned executing Judge has held that Rs. 10,000 were received by Manoranjan, plaintiff No. 2, and he received them on his own behalf as well as under the authority from Manekbai, plaintiff No. 1A. But that payment, in the absence of a sanction of the Court, could not be recognized as payment to Chandrashekhar, plaintiff No. 1B, who is a minor. Under O. XXXII, r. 6, of the Civil Procedure Code, the next friend is not, without the leave of the Court, entitled to receive any money or other immoveable property on behalf of a minor either (*a*) by way of compromise before decree or order, or (*b*) under a

decree or order in favour of the minor. No attempt was made to obtain leave of the Court under O. XXXII, r. 6 of the Civil Procedure Code. The payment of Rs. 10,000 to plaintiff No. 2, Manoranjan, though it is binding upon Manekbai by reason of the authority given by her, cannot bind the minor, Chandrashekhar, plaintiff No. 1B. It appears to have been pointed out to the learned executing Judge that plaintiff No. 1B being a minor payments made to plaintiff No. 1A or to plaintiff No. 2 could not bind him. Issue No. 11 expressly raised that contention, and the learned executing Judge recorded a finding that payments except to the extent of Rs. 10,000 and ornaments in schedule C were not binding upon the minor plaintiff No. 1B. However, in the judgment of the learned Judge there is no reference to the provisions of O. XXXII, r. 6, of the Civil Procedure Code, nor even to the fact that Chandrashekhar, plaintiff No. 1B, was a minor and that no one was entitled to act on his behalf in receiving money or immoveable property without leave of the Court. Chandrashekhar, plaintiff No. 1B, is therefore not bound by the payment of Rs. 10,000 to Manoranjan, plaintiff No. 2, even though authority may have been granted by his next friend, Manekbai, and is entitled to execute the decree. For reasons already stated he cannot be limited to execution in respect of his share only in that item.

First Appeal No. 547 of 1949 filed by plaintiffs Nos. 1A and 1B must therefore be partially allowed. The order of the lower Court in so far as it refused execution to plaintiff No. 1B in respect of the amount of Rs. 10,000 must be set aside and the rest of the order confirmed. Defendant No. 2 will pay the costs of plaintiffs Nos. 1A and 1B in appeal No. 284 of 1949, which is dismissed. In appeal No. 547 of 1949 the parties will bear their own costs.

Defendant No. 2 appealed under the Letters Patent.

S. S. Kavalekar, with *R. G. Samant,* for the appellant.

M. G. Chitale, for the respondents.

RAJADHYAKSHA J. This is an appeal under the letters patent from a decision of Mr. Justice Shah in First Appeal No. 284 of 1949 which confirmed the order of the Civil Judge, Senior Division, Sholapur, in Darkhast No. 883 of 1946.

One Hirachand Gulabchand and his son Manoranjan filed a suit against Hirachand's two brothers Shivlal Gulabchand and Walchand Gulabchand for an account of certain property which they alleged had been entrusted to the two defendants for management. During the pendency of the suit, Hirachand, plaintiff No. 1, died and his widow Manekbai and his minor son Chandrashekhar were brought on record as his heirs and legal representatives and they were impleaded as plaintiffs

1952

VALCHAND GULABCHAND v. MANEKBAI HIRACHAND

Rajadhyaksha J

Nos. 1A and 1B to the suit. Chandrashekhar being a minor was represented by his mother Manekbai as his next friend. During the course of the suit the parties referred their dispute to arbitration. The arbitrator made an award and a decree in terms of the award was passed on August 1, 1945. Under that decree, the defendants were asked to deliver possession of shares worth about Rs. 13.842, certain ornaments mentioned in schedules B and C worth Rs. 13,574 and Rs. 18,550 respectively, certain silverware worth about Rs. 150 and carts bullocks worth about Rs. 1,800 to the plaintiffs. In the alternative they were awarded a sum of Rs. 27,044. In addition to this, the defendants were asked to render accounts of the money-lending business to the plaintiffs and to pay a sum of Rs. 10,000. Manoranjan, plaintiff No. 2, was the step-son of Manekbai and it appeared that after the death of his father, plaintiff No. 1, there were disputes between Manekbai and Manoranjan. Some of these disputes took the form of proceedings in criminal Courts. Manoranjan then admittedly started living with his uncle Walchand, defendant No. 2, and appeared to be supporting the defendants' case. The defendants having failed to satisfy the decree, Manekbai filed a Darkhast No. 883 of 1946 in the Court of the Civil Judge, Senior Division, Sholapur, to execute the decree on behalf of herself and her minor son Chandrashekhar. As the decree was a joint decree, the darkhast application came to be filed under the provisions of O. XXI, r. 15, which enables one or more of the decree-holders to apply for execution of the whole decree for the benefit of all decree-holders. After an order of attachment was issued by the executing Court, defendant No. 2, Walchand, appeared before the Court and contended (1) that the darkhast filed by Manekbai was not maintainable, inasmuch as plaintiff No. 2 Manoranjan had not joined in the filing of the darkhast, (2) that the ornaments mentioned in schedules B and C had, before the date of the darkhast, been already handed over to Manekbai and Manoranjan, (3) that Rs. 10,000 had been paid to Manoranjan at the time of his marriage, and (4) that the decree-holders had agreed to take one land belonging to the defendants situated at Soregaon in satisfaction of the decree to the extent of Rs. 25,000.

Both the executing Court and Mr. Justice Shah have held that the darkhast was maintainable, and that the agreement to take one land belonging to the defendants situated at Soregaon

in satisfaction of the decree to the extent of Rs. 25,000 had not been proved; and these points have not been disputed before us. With regard to the ornaments mentioned in schedule C, both the executing Court and Mr. Justice Shah have come to the conclusion that they were meant exclusively for Manoranjan and that therefore the decree must be deemed to have been satisfied *pro tanto* by the delivery of those ornaments to Manoranjan. As regards the cash payment of Rs. 10,000, which were admittedly received by Manoranjan, plaintiff No. 2, the executing Court held that the payment was made under an authority from Manekbai, plaintiff No. 1A, and gave credit in respect of that payment to all the decree-holders. Mr. Justice Shah, however, took the view that the payment did not bind Chandrashekhar, minor plaintiff No. 1B, and he therefore allowed execution to proceed even in respect of that sum. So far as the property mentioned in schedule B is concerned, both the executing Court and Mr. Justice Shah have held that there was no authority from Manekbai and there was no discharge of the decree in respect of that item. Mr. Justice Shah, therefore, allowed execution to proceed in respect of all the items except in respect of the ornaments mentioned in schedule C which were, according to both the Courts, meant exclusively for Manoranjan, plaintiff No. 2. Against that order this appeal has been filed by defendant No. 2 under the letters patent.

It has not been disputed before us by Mr. Kavalekar that rendering of satisfaction to one of the several joint decree-holders does not bind the other decree-holders. But what he has urged strenuously before us is that the payment to Manoranjan should be regarded as satisfying Manoranjan's own share in the decree and that therefore the darkhast filed by Manekbai and her minor son should be allowed to proceed only in respect of their own share in the decree. He has argued that excluding the ornaments mentioned in schedule C worth Rs. 18,550 which, according to both the Courts, belong exclusively to Manoranjan, plaintiff No. 2, the value of the rest of the decree was Rs. 66,410. Mr. Kavalekar says that each of the plaintiffs was entitled to 1/3rd share therein and that therefore Manoranjan was entitled to Rs. 22,136-10-8. Actual payment made to Manoranjan is Rs. 10,000 plus the value of the ornaments in schedule B, viz., Rs. 13,574. Thus Manoranjan has received credit to the extent of Rs. 23,574, which is slightly more than the amount which Manoranjan was, in any case, entitled

1952

VALCHAND GULABCHAND v. MANEKBAI HIRACHAND

Rajadhyaksha J.

under the decree. According to Mr. Kavalekar, defendant No. 2 does not claim any credit for the amount paid to Manoranjan in excess of his own share in the decree, but contends that the darkhast of plaintiffs Nos. 1A and 1B should proceed only with respect to the sum of Rs. 44,273 only, i.e. only 2/3rds share of plaintiffs Nos. 1 and 2 in the decretal amount of Rs. 66,410.

The real point, therefore, to be considered is whether the payment to one of the several joint decree-holders does or does not amount to a discharge of that decree-holder's share in the decree with the effect that the remaining joint decree-holders can proceed to execute the decree only in respect of their own share therein. Mr. Justice Shah has held that such payment cannot be regarded as a *pro tanto* satisfaction of the share of that decree-holder who receives payment and therefore the remaining decree-holders cannot be compelled to seek execution only in respect of their own share in the decree. He has dealt with this point as follows in his judgment which is under appeal:

"Now, apart from authority, a payment to one of several joint decree-holders whose individual rights in the subject-matter of the decree are not worked out either expressly or by necessary implication in the decree is not a payment to all and such payment cannot deprive the other decree-holders of their right to enforce the decree, because obviously if a right is given to several decree-holders to enforce compliance with the terms of the decree, it cannot be said that there has been a sufficient compliance of the terms of the decree when satisfaction has been rendered to one of the decree-holders, but not to all. The Court's direction must be complied with by rendering satisfaction to all persons who are jointly interested in the decree. The rule, however, is subject to two well recognized exceptions: (1) when the decree-holder receiving the money has authority to receive payment on behalf of all, such authority being either express or implied. This is no more than an application of the rule of the law of agency: *qui facit per alium facit per se.* The authority may arise by reason of the terms of the decree or may have been granted after the decree; as, for instance, by a power-of-attorney from other decree-holders, or even may exist by relation which subsisted between the decree-holders prior to the date of the decree, but in all cases such authority not being contrary to the provisions of an express statute like O. XXXII, r. 7, of the Civil Procedure Code, (2) when distinct shares of the decree-holders are determined and known, payment to one of the decree-holders of his share satisfies the decree to that extent. Strictly speaking a decree envisaged by the second exception is not a joint decree; and a decree-holder who is entitled to obtain satisfaction of his right can claim it without reference to the rights of the other decree-holders. However, if a case does not fall within

either of the two exceptions, the payment to one of the several decree-holders cannot be recognised as payment to all or even to the extent of the share of the decree-holder in the property received by him (the learned Judge presumably means even to the extent of the share of the decree-holder in the whole decree). The reason for the rule is clear. If the judgment-debtor is required to pay any amount to the joint decree-holders whose shares are not specified, one of them cannot say, apart from special authority traceable to the relation subsisting or arising under or after the decree, that payment to him is payment to all. It is true that under O. XXI, r. 15, of the Civil Procedure Code, the Court which is directed to execute a decree at the instance of several joint decree-holders is entitled to make an order, which it deems necessary, for protecting the interests of all the persons who have not joined in the application for execution. But such an order can be passed only for the benefit of the decree-holders who have not joined in the application for execution. Under that rule the Court may allow execution of the whole decree on terms, but it cannot compel one or more of the joint decree-holders to levy execution for a fraction of the decree. Nor can the Court at the instance of the judgment-debtor be asked to decide a dispute between the decree-holders *inter se*. If after payment to one of the joint decree-holders it is contended that there has been a satisfaction of the decree to the extent of the share of the decree-holder receiving the payment, the judgment-debtor raises a question not between the parties to the suit or other representatives arrayed on opposite sides but substantially raises a dispute between the parties arrayed on the same side. The executing Court is not competent to decide such a dispute, because it is a question which is essentially foreign to the nature of the execution proceedings. An executing Court cannot be asked to decide a question as to the shares which should be assigned to the individual decree-holders under a joint decree when the decree has not made any such provision. If the executing Court is asked to launch upon such an enquiry and does so proceed to make the enquiry it would in effect be deciding a suit for partition between the joint decree-holders with reference to the property, which is the subject-matter of the decree primarily, and incidentally with regard to other property held jointly on the same tenure or relationship as the property which is the subject-matter of the decree."

In our opinion, the view taken by Mr. Justice Shah is correct. The essence of the matter is that the decree sought to be executed is a joint decree and has to be executed as such. If the shares of the decree-holders are apparent on the face of the decree either expressly or by necessary implication, it is not strictly speaking a joint decree. In such a case, as Mr. Justice Shah has pointed out, each decree-holder can take out execution in respect of his own share. But where the shares of the respective decree-holders are not apparent on the face of the decree, either expressly or by necessary implication, the decree which is sought to be executed is a joint decree, and the judgment-debtors must render satisfaction to the whole body of the

1952

VALCHAND GULABCHAND v. MANEKBAI HIRACHAND

Rajadhyaksha J.

decree-holders. Where one of the decree-holders is authorised to receive payment on behalf of all, the payment to him is obviously payment to the whole body of the decree-holders. But save in such cases, satisfaction must be rendered to the whole body of the judgment-creditors. Mr. Kavalekar sought to rely upon the provisions of O. XXI, r. 15, under which one of the several decree-holders is permitted to seek execution of the whole decree for the benefit of all, and the Court is required to make such orders as it deems necessary for protecting the interests of the persons who have not joined in the application. He suggested that the Court in the present case should, under sub-r. (2) of r. 15 of O. XXI, make an order protecting the interests of Manoranjan by holding that the decree has been satisfied to the extent of Manoranjan's share by receiving payment to the extent of Rs. 23,574. In our opinion, this is a wrong construction of O. XXI, r. 15. The Court is required to make such orders as it deems necessary for protecting the interests of decree-holders who have not joined in the application, if execution of the whole decree is sought (and is allowed for the benefit of them all) by one or more of the joint decree-holders. Normally, a joint decree must be executed by all the decree-holders. A special exception has been made under O. XXI, r. 15, permitting one or more joint decree-holders to seek execution of the decree. But in such a case, the execution must be of the whole decree and for the benefit of all. Even then a discretion is left to the Court whether to allow such execution or not at the instance of one or more of several joint decree-holders. But if the Court does allow the execution of the whole decree for the benefit of all decree-holders, then the Court is bound to make some provision for protecting the interests of the persons who have not joined in the application. The point of the rule is that the *whole* decree is allowed to be executed for the benefit of them all at the instance of one or more of several joint decree-holders. If the whole decree is allowed to be executed for the benefit of them all, the Court has to make orders for protecting the interests of those who have not joined in the application. This it can do by taking security in respect of what is roughly computed to be the share of the decree-holders who have not joined in the application. But what Mr. Kavalekar asks us to do in this case is not to allow plaintiffs Nos. 1A and 1B to execute the whole decree, but to compel them to seek execution only in respect of their own share, which is quite contrary to what is contemplated

under O. XXI, r. 15. An order for protecting the interests of the persons not joining in the application for the execution of the decree can be made only when the decree as a whole is permitted to be executed for the benefit of all, and so far as we can see, O. XXI, r. 15, does not contemplate splitting up of a joint decree into one in favour of individual decree-holders in respect of their own shares. Such a procedure would mean permitting an executing Court to go behind the decree as such.

Mr. Justice Shah has also taken the view that ascertaining the respective shares of the decree-holders in a joint decree is foreign to the nature of execution proceedings. In our opinion, this view is correct. Mr. Kavalekar sought to rely on the provisions of s. 47 of the Civil Procedure Code which defines what questions could be determined by the Court executing a decree. The executing Court has to decide, under that section, all questions relating to the execution, discharge or satisfaction of the decree. In asking the Court to ascertain what the respective shares of joint decree-holders in a particular decree are, the Court in effect is asked to determine the rights of the parties as in a partition suit between the joint decree-holders. It is true that, incidentally, determination of such a question would be a point in relation to the execution, discharge or satisfaction of a decree. But primarily, the Court is asked to ascertain the rights of the respective joint decree-holders in the decree itself. In our opinion, Mr. Justice Shah is right in saying that such a procedure would in effect amount to deciding "a suit for partition between joint decree-holders with reference to the property in the suit which is the subject-matter of the decree primarily, and incidentally with regard to the other property held jointly on the same tenure or relationship as the property which is the subject-matter of the decree."

One can easily see what difficulties would arise if any other view was taken. Supposing in the present case the judgment-debtors were solvent only to the extent of about Rs. 22,000, would it be right to permit them to pay the whole amount to the decree-holder of their choice and then contend that the decree should be held to be satisfied with respect to that decree-holder's share and that the other decree-holders should be compelled to seek execution in respect of their own shares when the defendants have nothing whatever in their possession to satisfy that decree with. The Rs. 22,000 should be available to all the decree-holders, and it should not be within the competence of a judgment-debtor to select any one of the

1952

VALCHAND GULABCHAND v. MANEKBAI HIRACHAND

Rajadhyaksha J.

joint decree-holders with whom he may be in collusion to satisfy him alone and leave the other decree-holders to whistle for their own money. Again, it would be quite wrong to ascertain the respective shares of the decree-holders in the darkhast itself. If a partition suit were to be brought as between the decree-holders, the decree would undoubtedly be a joint asset which would be a subject-matter of a division. In a partition suit, every person does not get his own share in each bit of the joint property. In an equitable partition, the rights and liabilities of all the persons seeking partition have got to be determined. It may turn out, for instance, in this case that Manoranjan has received credit for his share of the family property in some other way with the result that his share in the decree could be deemed to be satisfied in that manner. Under such circumstances, Manoranjan would not be entitled to get any share in the proceeds of the decree. In a partition suit all the rights and liabilities of the parties are determined and then an equitable partition is made. It would not be right to allow one of the decree-holders to get his share in the decree irrespective of what his other rights and liabilities may be in respect of the whole of the property belonging to the family. Yet this is what Mr. Kavalekar asks us to do in this case by saying that Manoranjan's share in the decree should be deemed to be satisfied and that plaintiffs Nos. 1A and 1B should be allowed to execute the decree only in respect of their own share. We are, therefore, of the opinion that the view taken by Mr. Justice Shah is correct, viz. that payment to Manoranjan who was one of the joint decree-holders could not be regarded as being a *pro tanto* satisfaction even in respect of his own share in the decree and that the remaining decree-holders Manekbai and Chandrashekhar are entitled to execute the whole decree. It is true that this view may result in double payment having to be made by the judgment-debtors, but for that they have no one else to thank except themselves, and if they have to make such double payment, they may be in a position to recover from Manoranjan the amount which they wrongly paid to him.

There is no reported authority of our own Court on the point which we have to consider. But Mr. Kavalekar has invited our attention to several decisions of other High Courts in support of his contention that the payment to one of the joint decree-holders should be regarded as a *pro tanto* satisfaction of at least that decree-holder's share in the joint decree

so that the other decree-holders can execute the decree only in respect of their own share. There have been two decisions of the Allahabad High Court to which our attention was invited by Mr. Kavalekar. In *Tamman Singh* v. *Lachmin Kunwari*[1] it was held that

"One of the two joint holders of a decree under s. 88 of the Transfer of Property Act cannot alone certify satisfaction of the whole decree so as to bind the other decree-holder, though he may certify satisfaction in respect of his own interest therein."

Where one of such decree-holders purported to certify satisfaction of the whole decree, it was held

". . . that the other decree-holder, who had refused to recognise the certificate, was entitled to obtain an order absolute for sale of the mortgaged property in respect of his own share of the mortgage debt."

It appears, however, from the judgment that there was no dispute in that case as to the extent of the shares of the two decree-holders. Where there is no dispute as regards the respective shares of the joint decree-holders, and where such shares are apparent on the face of the decree, then there would be no objection to satisfaction being entered in respect of the shares of the individual decree-holders, and the decree-holder whose share in the decree was not satisfied could proceed to execute the decree in respect of his own share. This case, therefore, is no authority for the proposition that payment to one of the joint decree-holders necessarily amounts to a *pro tanto* discharge of his own share in the joint decree, so that the other decree-holders could be compelled to seek execution only in respect of their own share. In *Umrao Beg* v. *Mukhtar Beg*[2] 15 plaintiffs obtained a decree against one defendant in respect of the costs. The defendant paid the whole amount of the costs awarded to one of the plaintiffs who was his sister and she certified to the Court that she had received the full amount of the costs awarded. On an application being made by the remaining plaintiffs for the execution of the entire decree for costs, it was held that the payment of the full amount of the costs to one only of the joint decree-holders and the certifying of such payment to the Court was no defence to the application of the remaining plaintiffs, which was granted to the extent of their share of the costs. In the course of the judgment it was observed (p. 402):

". . . It also follows that no one of the decree-holders is competent to grant full discharge of the decree out of court, or to certify to the

[1] (1904) 26 All. 318. [2] (1923) 45 All. 401.

1952

VALCHAND GULABCHAND v. MANEKBAI HIRACHAND

court complete satisfaction of the decree, without the concurrence of all the decree-holders. So far, the decision of the court below is correct. If the judgment-debtor has really paid the entire amount of the decree to his sister, but has done so with the obvious intention of evading the provisions of order XXI, rule 15, of the Code of Civil Procedure, he must take the consequences if the result is in fact to compel him to pay the whole amount of the decree, or any part thereof, twice over."

Rajadhyaksha J.

These observations are in consonance with the view which we take. But the learned Judges then went on to state as follows (p. 402):

"... We have no doubt that this is a wide discretion and that the court, so long as it insists upon payment of the entire amount of the decree by the judgment-debtor, has authority to make such adjustment of the rights of the decree-holders *inter se* as it may think equitable and proper. Those rights, however, are the rights under the decree. In the present instance the court below seems to have assumed that if there be a decree in favour of a large number of plaintiffs, it must be understood that they are entitled to divide the money amongst themselves *per capita* .... We think, however, that the court, without going behind the terms of the decree, or entering into any question which, if it was to be litigated at all as between the plaintiffs, should have been adjudicated upon prior to the passing of the decree and not after, is nevertheless entitled for the purposes of O. XXI, r. 15, of the Code of Civil Procedure to examine the pleadings and to inform itself as to the precise position of the plaintiff as they came into court."

It would thus appear that their Lordships of the Allahabad High Court held (1) that the executing Court could not go behind the terms of the decree and (2) that it could not enter into any question which, if it was to be litigated at all as between the plaintiffs, should have been adjudicated upon earlier. The implication therefore is that an executing Court cannot launch upon an inquiry to find out what the respective shares of the various decree-holders are, but it can examine the pleadings to ascertain the precise position of the plaintiffs as they came into Court. This case, therefore, also does not support the proposition of Mr. Kavlekar that an executing Court should embark upon an examination of the rights of the respective decree-holders in a joint decree and then enter satisfaction to the extent of the payment received by one of the decree-holders in respect of his own share in the decree. Thus, both the Allahabad cases appear to have been decided on their own facts and do not appear to support the view for which Mr. Kavalekar has contended.

Two cases of the Patna High Court have been brought to our notice. In *Sadho Saran Pandey* v. *Mt. Subhadra*[1] it was held that

[1] [1925] A. I. R. Pat. 822.

"It is not open to one of two joint holders of a decree to certify satisfaction of the whole decree so as to bind the other decree-holders."

There can be no doubt about this proposition. But the learned Judges also went on to say that "a joint decree-holder may certify satisfaction in respect of his own interest therein." It appears, however, that that decree-holder's interest therein was either apparent on the face of the decree or was not disputed. This is brought out in the other case of the Patna High Court, viz. *Kumaid Kumar Singh* v. *Amar Nath Singh*.[1] The learned Chief Justice, in referring to the earlier case, pointed out that in that case the two ladies had separate shares in the decree. He observed (p. 327):

"The fact that Subhadra Kuar was entitled to execute the decree for her share shows that she had a definite and separate share in the decree. No member of a joint family can execute for his share a decree held by the joint family."

He also referred to the view consistently taken by the Madras High Court that a payment of the amount of a decree to one of a number of joint decree-holders cannot be treated as satisfaction of the decree even in part, unless it is admitted by the other decree-holders or unless it is proved that he and the others to whom the money was due owned separate and definite shares in the joint decree. Where the joint decree is owned by a joint family, then payment to one of the members will not operate as satisfaction wholly or in part of the decree or of the share of that particular member in the decree. This view of the Patna High Court supports the view we have taken in the present case.

We have been referred to several decisions of the Madras High Court. The earliest decision is *Sultan Moideen* v. *Savalayammal*.[2] There one of the two joint decree-holders applied for execution of the decree to the full amount. It appeared that the other decree-holder had received a certain sum from the judgment-debtor on account of the decree out of Court, but this payment had not been certified. It was held.

" . . . that the payment was valid only to the extent of the share to which the payee was entitled, and that this share having been ascertained and credit given for it, the decree should be executed in favour of the present applicant for the balance."

A direction was accordingly issued to the District Judge to ascertain what was the share due to the person to whom pay-

[1] (1942) 21 Pat. 322. [2] (1892) 15 Mad. 343.

1952

VALCHAND GULABCHAND v. MANEKBAI HIRACHAND

Rajadhyaksha J.

ment had been made by the defendant. The judgment of the Court is a very short one, and it does not appear that the question whether the shares could be ascertained in execution was either raised before the Court or decided by the learned Judges.

The next case to which our attention was invited was the full bench decision of the Madras High Court in *Periasami* v. *Krishna Ayyan.*[1] The point referred to the full bench was this (p. 432):

> "When there are two or more joint decree-holders, and the execution of the decree is barred by limitation as against one or more of them, whether one who is not so barred owing to minority can execute the decree for the benefit of all or, if not, for his own benefit alone?"

The point, therefore, that came before the learned Judges was one of limitation. But the observations of the learned Chief Justice at page 437 lend support to the view that we take. He says:

> "In the present case the decree was a joint decree and it seems to me that it is no longer executable as a joint decree, and I see no reason for holding that, although it is not executable as a joint decree, it is executable *quoad* the interest of one of the decree-holders, that is as a decree under which the interests of the joint decree-holders have become severed."

It is thus clear that if a decree could not be executed as a joint decree, as was the case before the learned Judges—because the execution against some of the decree-holders was barred by limitation—it could not be executed as if the interests of the joint decree-holders were severed and that therefore one of the joint decree-holders who was a minor could not be allowed to execute the decree in respect of his own share. When the execution of the decree as a joint decree becomes impossible, then it cannot be allowed to be executed as if the interests of the joint decree-holders had become served. This decision supports the view that we take that a joint decree must be executed as a joint decree and not as if it was a separate decree with regard to the respective shares of the joint decree-holders. Mr. Justice Bhashyam Ayyangar who delivered a separate judgment in that case also lays down the general principle at page 441 of the Report that "payment to one cannot operate as a discharge of the decretal debt of the joint decree-holders, unless such person is authorised by the others to accept such payment in entire or partial satisfaction

[1] (1902) 25 Mad. 431, F. B.

of the decree." We think that this full bench decision of the Madras High Court supports the view that we take. The case of *Gurusamy Goundan* v. *Sivanmalai Goundan*[1] does not really touch the point which is at issue before us. It only lays down that under O. XXI, r. 15, one decree-holder can file an application for execution of the whole decree, and the Court in such a case is entitled to hear what the other decree-holders have to say, and if they say that the application of their fellow decree-holder is a fraud, there is nothing to prevent the Court from disallowing the execution. In *V. N. Muthuswamy* v. *V. S. Narasimha*[2] it was held that.

" . . . One of the joint decree-holders, . . . cannot give a valid discharge by receiving the decree amount out of Court without the concurrence of the other decree-holders."

There can be no disagreement with this proposition. The learned Judges further held that if there are two or more decree-holders, payment must be made to all. But this case also does not decide the point as to whether such payment operates as a *pro tanto* discharge of the share in the decree of that decree-holder who receives payment. In *Hanumanthappa* v. *Seethayya and Co.*[3] there was a decree in favour of a firm. Payment was made out of Court to one partner-decree-holder, and it was held that it binds the other partner-decree-holders provided that the other partner-decree-holders are at liberty to establish special circumstances why such payment should not bind them. The learned Judges held that

' . . . if before the passing of the decree one of the partners, by receiving payment of the debt which is the subject-matter of the suit, can give a valid discharge binding on the other members of the firm, logically there is no reason why he cannot do so after the passing of the decree."

In the course of the judgment they observed that

" . . . When the decree is merely in favour of two or more decree-holders without anything more appearing on its face, it is necessary to insist upon proof of special agency conferring the right to receive the decree amount on one of them. But when on the face of the decree it appears that the decree is in favour of the firm, that is, in favour of all the partners as such, it is reasonable to imply that the decree itself declares the rights which the partners would have under the general law."

That case merely lays down the proposition that payment to an agent on behalf of all the joint decree-holders is payment to them. This case, therefore, does not establish the proposition advanced by Mr. Kavalekar.

[1] (1932) 56 Mad. 316.
[2] [1934] A. I. R. Mad. 330.
[3] [1949] A. I. R. Mad. 790.

1952

VALCHAND GULABCHAND v. HIRACHAND MANEKBAI

Rajadhyaksha J

On the other hand, there is one decision of the Madras High Court which is directly in point and which criticises the view taken in *Sultan Moideen* v. *Savalayammal.*[1] That case is *Pitchakkuttiya Pillai* v. *Doraiswami Moopanar.*[2] At page 233, the learned Judge says:—

> "In *Sultan Moideen* v. *Savalayammal,*[1] it was held that where payment has been made to one of two joint decree-holders that payment was valid to the extent of the share to which the payee was entitled, and therefore an enquiry was ordered as to the extent of that share. This ruling is certainly not in conformity with the later cases quoted above. I consider that I must follow the later cases and hold that the payment is not valid against even the 1st plaintiff. The decree had to be executed as a joint decree or not at all. Valid discharge of any portion of the debt could only be given by one who could give it for all joint decree-holders, and the 1st plaintiff could not do that because the discharge so far as the minor plaintiffs were concerned was not valid in law at all. Hence I must hold that the decree has not been at all satisfied."

It would thus appear that the current of the decisions of the Madras High Court is, as pointed out by the learned Chief Justice in *Kumaid Kumar Singh* v. *Amar Nath Singh,*[3] in favour of the view that payment to one of the joint decree-holders does not amount even to a *pro tanto* satisfaction of the share of that decree-holder in the decree.

So far as the Calcutta High Court is concerned, the earliest decision to which our attention has been invited is *Tarruck Chunder Bhuttacharjee* v. *Divendro Nath Sanyal*[4]. In that case on an application for execution for the full amount due under a decree by some of several joint decree-holders, the judgment-debtor objected to execution being granted for the full amount of the decree on the ground that he had already paid off a large portion of the money due under the decree to B, one of the joint decree-holders. The payment was made out of Court, but B who claimed to be entitled to a $12\frac{1}{2}$ annas share in the decree certified the payment in the manner prescribed by s. 258 of the Civil Procedure Code of 1882 and represented that his claim had been satisfied in full. The other joint decree-holders denied B's right to the $12\frac{1}{2}$ annas share claimed by him, and refused to recognise the payment said to have been made to him. The lower Court disallowed the objection, and granted execution for the full amount of the decree. It was held by the High Court that

[1] (1892) 15 Mad. 343.
[2] [1925] A. I. R. Mad. 230.
[3] (1942) 21 Pat. 322.
[4] (1883) 9 Cal. 831.

" . . . the Court ought not to recognise payments made out of Court, unless made and certified *for the benefit* of all the joint decree-holders of any portion of the decree in excess of that to which the decree-holder so paid is undisputedly entitled."

It was also held that

" . . . a judgment-debtor is entitled to credit for any sum paid *bona fide* to one of several joint decree-holders and duly certified to the Court by the latter, and that the other joint decree-holders cannot execute the decree for more than their own share."

The High Court thought that the lower Court was wrong in wholly ignoring the payment certified by the decree-holder B, and that the lower Court should have determined, first whether the payment to B was a fraud on the other joint decree-holders, and secondly, what amount the latter were entitled to have out of the whole decree, the latter being the main question between the applicants for execution and the judgment-debtor, and as such clearly within the scope of s. 244 of the Civil Procedure Code. As has been pointed out by Mr. Justice Shah in his analysis of this judgment, the case really is an authority for the proposition that where the payment is certified by one decree-holder for the benefit of all, and when there is no dispute about what the share of that decree-holder is, then the payment would amount to a *pro tanto* satisfaction of the share of that decree-holder, and the other decree-holders cannot execute the decree for more than their own share. Neither of these pre-requisites is present in this case. The payment made to Manoranjan has not been certified as being for the benefit of all. Secondly, Manoranjan is not undisputedly entitled to any particular share in the decree. After having laid down the proposition quoted above, the learned Judges have examined some of the earlier cases of that Court and have come to the following conclusion (p. 836):

> "The decided cases, therefore, do seem to establish this, that a judgment-debtor is entitled to credit for any sum paid *bona fide* to one of several joint decree-holders, and duly certified to the Court by the latter; and that the other joint-creditor cannot execute the decree for more than their own share."

With respect, we think that this proposition is somewhat contrary to what they themselves have laid down in the earlier part of the judgment. Mere *bona fide* payment to one of the several joint decree-holders and duly certified to the Court by him is not sufficient unless that payment is made for the benefit of all the joint decree-holders. Secondly, the other joint credi-

1952

VALCHAND GULABCHAND v. MANEKBAI HIRACHAND

Rajadhyaksha J.

tors can execute the decree for more than their own share only if there is no dispute as regards the respective shares of the decree-holders. We think that the proposition which is laid down by the learned Judges at page 836 is much wider than what they intended themselves to lay down in their observations in the earlier part of the judgment. The learned Judges also seem to have had some difficulty in deciding whether the question as to what the shares of the various decree-holders are could be decided in execution. At page 837 they observed:

> ". . . This last question is, no doubt, one that is between Behary Lall and the other decree-holders; and as such may not be one which the Court should decide in the execution proceedings. But it is not necessary to decide whether the Court has jurisdiction to decide the point as between the decree-holder; for it is obviously also a question, and the main question, between the applicants for execution and the judgment-debtors; and as such it clearly comes within the scope of s. 244."

With respect we think that it is mainly a question between the joint decree-holders as such, although it may incidentally affect the question of the execution of the decree against the judgment-debtor. What the Court is asked to do in such cases is to ascertain the respective shares of the joint decree-holders in a decree and on such shares being ascertained to consider how far the executing joint decree-holders are entitled to maintain the application for executing the whole decree. It is, therefore, primarily a question of ascertaining the shares of the joint decree-holders and incidentally a question relating to the execution of the decree. The other case of the Calcutta High Court to which our attention was invited is *Surendra Kumar* v. *Abhay Kumar Das.*[1] It was held in that case:

> "When there is a joint decree payment to one decree-holder does not amount to an acquittance by all the decree-holders. So where a joint decree for costs does not specify shares of the decree-holder *inter se* and the judgment-debtor pays some amount to some decree-holders out of the Court the application by others for entire amount is not maintainable. The Court should ascertain the shares of the decree-holders in execution proceedings, and the decree-holders receiving more than their due share of the decretal amount cannot certify the amount in excess and the judgment-debtor is not protected in respect of excess paid."

The judgment purports to follow the decisions in *Tarruck Chunder Bhuttacharjee* v. *Divendro Nath Sanyal*[2] and *Umrao*

[1] [1930] A. I. R. Cal. 78. [2] (1883) 9 Cal. 831.

Beg v. *Mukhtar Beg.*[1] But as we have pointed out, the observations in *Tarruck Chunder Bhuttacharjee* v. *Divendro Nath Sanyal*[2] do not necessarily support the conclusion arrived at by the learned Judges, and the case of *Umrao Beg* v. *Mukhtar Beg*[1] was decided on its own facts, inasmuch as it was a partition suit, and the shares of the respective decree-holders were ascertained from the pleadings without undertaking an independent enquiry for the purpose of ascertaining those shares. With respect, we are not in agreement with the view taken and the order passed in *Surendra Kumar* v. *Abhay Kumar Das*[3].

Our attention was next invited to a decision of the Nagpur High Court in *Fatmabi* v. *Tukabai.*[4] That case only lays down that a payment made to one decree-holder is not binding on the other joint decree-holders. The case does not touch the point as to whether such payment is a good discharge in respect of the share of that decree-holder who receives payment, so that the other decree-holders can maintain the darkhast only in respect of their own share.

Mr. Kavalekar then referred to a judgment of a single Judge of the Lahore High Court in *Kaka Ram* v. *Haveli Ram.*[5] It was held therein as follows:

> "Where shares of the decree-holders are not specified in the decree but are not incapable of being determined, payment to one decree-holder gives a valid discharge to the extent of the share of the decree-holder to whom payment is made, and it is open to the judgment-debtor to show that the decree has been adjusted in whole or in part to the satisfaction of the decree-holder."

This decision purports to follow the decisions in *Sultan Moideen* v. *Savalayammal*[6] and *Tamman Singh* v. *Lachhmin Kunwari.*[7] As I have said in discussing these two cases, the decision in *Sultan Moideen* v. *Savalayammal*[6] is not in consonance with all the subsequent decisions of the Madras High Court and has been criticised in *Pitchakkuttiya* v. *Doraiswami*[8]. The decision in *Tamman Singh* v. *Lachhmin Kunwari*[7] was on its own facts as there was no dispute as regards the extent of the shares of the two decree-holders. Even the learned Judge in the Lahore case (*Kaka Ram* v. *Haveli Ram*[5]) allowed the execution to proceed because he thought, "there may be really no dispute between the joint decree-holders as regards their res-

[1] (1923) 45 All. 401.
[2] (1883) 9 Cal. 831.
[3] [1930] A. I. R. Cal. 78.
[4] [1945] Nag. 242.
[5] [1930] A. I. R. Lah. 814.
[6] (1892) 15 Mad. 343.
[7] (1904) 26 All. 318.
[8] [1925] A. I. R. Mad. 230.

1952

VALCHAND GULABCHAND v. MANEKBAI HIRACHAND

Rajadhyaksha J.

pective shares" and in directing further enquiry he ordered the lower Court to find out "if there was any objection on the part of Tara Chand to the payment being received by Haveli Ram in respect of his own share, and the decree being regarded as being satisfied to the extent of Haveli Ram's share." The question whether, if there is a dispute, the dispute can be resolved by proceedings in execution was not considered. We do not, therefore, think that this authority is really in support of the proposition advanced by Mr. Kavalekar.

Mr. Chitale for the respondent has invited our attention to the decision of the Judicial Commissioner of Peshwar in *Kartar Singh* v. *Gurdial Singh*.[1] It was held therein that

" . . . Order XXI, r. 1, 2 and 15 indicate the intention of the Legislature that the execution Court should keep an eye on the way the decree is satisfied and that in the case of a joint decree the interests of all the decree-holders should be protected by the execution Judge. It follows that a joint decree-holder cannot give a discharge for the decretal amount to the detriment and without the knowledge of the other decree-holders: . . .

The word 'decree-holder' in O. XXI, r. 1, although in singular, means all the decree-holders jointly when there are more than one. In the case of joint decree-holders when there is no specification of shares in the decree, one decree-holder cannot separately settle up with the judgment-debtor even so far as his share of the degree is concerned."

In the course of the judgment, the learned Judicial Commissioner observed that (p. 59):

" . . . it will be opening the door to fraud to allow a joint decree-holder to give a discharge even to the extent of his own share."

This judgment, therefore, supports the view which we take.

In the result, therefore, our view is supported by the decisions of the Patna High Court; the decisions of the Allahabad High Court can be distinguished; the general trend of the decisions of the Madras High Court is in favour of the view we take; the only decision of the Madras High Court which seems to take a contrary view, viz. *Sultan Moideen* v. *Savalyammal*,[2] is not in conformity with the later decisions of that Court, as pointed out in *Pitchakkuttiya* v. *Doraiswami*[3]. The two Calcutta decisions appear to take a different view. The decision of the Nagpur High Court in *Fatmabi* v. *Tukabai*[4] does not consider the question at issue, nor does the decision of the Lahore High Court in *Kaka Ram* v. *Haveli Ram*.[5] The decision of the Judicial Commissioner of Peshwar in *Kartar Singh* v. *Gurudial Singh*[6] supports the view we take.

(1) [1942] A. I. R. Pesh. 58.
(2) (1892) 15 Mad. 343.
(3) [1925] A. I. R. Mad. 230.
(4) [1945] Nag. 242.
(5) [1930] A. I. R. Lah. 814.
(6) [1942] A. I. R. Pesh. 58.

1952

VALCHAND GULABCHAND v. MANEKBAI HIRACHAND

Rajadhyaksha J.

We are, therefore, in agreement with the view of Mr. Justice Shah that payment to one of the several joint decree-holders cannot be recognised as a payment to all (unless he is authorised to to receive such payment on behalf of all), and does not amount to a *pro tanto* satisfaction even to the extent of what is regarded to be the share in the decree of the decree-holder who receives payment. It is, therefore, not correct to say that the remaining decree-holders can maintain the darkhast only to the extent of their own shares in the decree.

The result, therefore, is that we confirm the order of Mr. Justice Shah in First Appeal No. 284 of 1949 and dismiss this letters patent appeal with costs.

Appeal dismissed.

M. W. P.

APPELLATE CIVIL

Before Mr. Justice Rajadhyaksha, and Mr. Justice Vyas.

DAYARAM KASHIRAM SHIMPI (ORIGINAL DEFENDANT), PETITIONER *v.* BANSILAL RAGHUNATH MARWADI (ORIGINAL PLAINTIFF), OPPONENT.*

1952 *April* 16

Bombay Rents, Hotel and Lodging House Rates Control Act (Bom. LVII of 1947), s. 12 (3)—Decree for eviction for non-payment of rent—Appeal—Tenant paying arrears of rent and costs of suit before hearing of appeal—Whether appellate Court precluded from confirming decree—"Suit" includes "appeal"—"No decree shall be passed," meaning of—Whether expression includes confirmation of decree by appeal Court—Transfer of Property Act (IV of 1882), s. 114.

The words "at the hearing of the suit" occurring in sub-s. (3) of s. 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, include the hearing of the appeal arising out of the suit. Therefore, if at the hearing of an appeal from a decree for eviction passed on the ground of non-payment of rent the tenant pays or tenders in Court the standard rent or permitted increases then due together with the costs of the suit and also of the appeal, the appeal Court is precluded from confirming the decree.

Nilkanth Ramchandra v. *Rasiklal*,[1] and *Chandrasinh* v. *Surjit Lal*,[2] relied on.

Muchaya Basaya v. *Nagapaya*,[3] dissented from.

* Civil Revision Application No. 38 of 1951.

[1] [1948] 51 Bom. L. R. 280, F. B.

[2] (1951) 53 Bom. L. R. 532.

[3] (1951) S. A. No. 422 of 1950, decided by Dixit J. on Feb. 14, 1951 (Unrep.).