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of gold in question. Mr. Chawla, on behalf of the appellant, agrees that in the circumstances the case should be remitted to the Collector for fresh decision in accordance with law after hearing the appellant. I order accordingly. In the circumstances of the case, I leave the parties to bear their own costs.

Khanna, J.

A. N. GROVER, J.—I agree.

Grover, J.

K.S.K.

REVISIONAL CIVIL

Before D. K. Mahajan, J.

SARDARNI GURDIAL KAUR,—*Petitioner.*

versus

S. SATINDAR SINGH AND ANOTHER,—*Respondents.*

Civil Revision No. 614 of 1963.

1964

July, 31st.

Code of Civil Procedure (Act of 1908)—Ss. 73 and 115—Revision against an order under S. 73 allowing rateable distribution—Whether competent—S. 73—"Application to the court"—Meaning of—Whether means execution application to the court which is holding the assets.

Held, htat a revision against an order passed under section 73 of the Code of Civil Procedure allowing rateable distribution will not be entertained as under sub-section (2) of section 73 a suit is competent.

Held, that section 73 of the Code of Civil Procedure sets out the pre-requisite conditions before rateable distribution can be allowed. It does not, in terms, say that application for execution has to be made to the Court where the assets are lying. Under the law, application for execution has to be made in the Court which passed the decree. The application for execution goes to another Court only by transfer. No application for execution can be made directly to a Court which did not pass the decree merely on the

ground that that Court holds the assets of the judgment-debtor. In this situation, one cannot attach too much importance to the article 'the' in section 73 of the Code and a decree-holder is entitled to ask for rateable distribution of the assets of the judgment-debtor from the Court which is holding his assets if his application for execution of the decree was pending in any competent court before the assets were received by the court holding the assets. It is not necessary that his application for the execution of his decree must have been pending in the court holding the assets of the judgment-debtor before their receipt by that Court.

Petition under section 115 of Act 5 of 1908 for revision of the order of Shri Salig Ram, Senior Sub-Judge, Ambala dated 7th September, 1963, allowing the respondents' application for rateable distribution of the assets of the Judgment-debtor under section 73 of the Code of Civil Procedure.

G. P. JAIN AND S. S. MAHAJAN, ADVOCATES, for the Appellant.

H. L. SARIN, ADVOCATE, for the Respondents.

JUDGMENT

Mahajan, J.

MAHAJAN, J.—This petition for revision is directed against the order of the Senior Subordinate Judge, Ambala, allowing the respondents' application for rateable distribution of the assets of the judgment-debtor under section 73 of the Code of Civil Procedure.

So far as the facts of the case are concerned, there is no dispute. The petitioner Sardarni Gurdial Kaur obtained a money decree against her husband Sardar Umrao Singh on the 4th of May, 1925. She took out execution of this decree and attached a sum of Rs. 35,000 belonging to the judgment-debtor from

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the Court of the District Judge. This money was lying in the Court of the District Judge on account of compensation received for the acquisition of land by the Government. Objections were raised to this attachment under Order 21 rule 58 of the Code of Civil Procedure by the Punjab State as well as by Satinder Singh, son of the lady. The plea in the objections was that the amount did not exclusively belong to the judgment-debtor and, therefore, could not be attached. These objections were rejected on the 31st of October, 1962. A review application against the order of rejection also failed. Satinder Singh filed a suit under Order 21 of rule 63 of the Code of Civil Procedure but no similar suit was filed by the State of Punjab. The fate of this suit is not known. In the meantime Satinder Singh obtained a money decree for Rs. 46,000 odd against his father from the Court of Subordinate Judge, 1st Class, Ambala on the 23rd of May, 1963. He took out execution of this decree on the 6th of August, 1963. The assets of the judgment-debtor were received by the Senior Subordinate Judge from the Court of the District Judge in pursuance of the application of Sardarni Gurdial Kaur on the 24th of August, 1963. On the 27th of August, 1963, an application was made by Satinder Singh to the Court of the Subordinate Judge, 1st Class to the effect that he was entitled to rateable distribution of the amount lying in the Court of the Senior Subordinate Judge along with the decree-holder Sardarni Gurdial Kaur at whose instance the amount had been attached and withdrawn from the court of the District Judge. This application was later on sent by the Subordinate Judge, 1st Class to the Court of the Senior Subordinate Judge. Before the learned Senior Subordinote Judge, Sardarni Gurdial Kaur took the objection that Satinder Singh was not entitled to rateable distribution. The objection was in this form, that, no application for execution was made to the Court of the Senior Subordinate Judge before the

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assets were received in that Court on 24th of August, 1963. This objection was repelled by the Senior Subordinate Judge. He allowed Satinder Singh to share rateably with Sardarni Gurdial Kaur the assets in question. It is against this decision that the present petition for revison has been preferred by Sardarn Gurdial Kaur.

Mr. Ganga Parshad Jain, learned counsel for the lady, has raised the same contention again. Before dealing with it, it will be proper to dispose of a preliminary objection raised by Mr. Harbans Lal Sarin who appears for the respondent Satinder Singh. The preliminary objection is: that under section 73(2) of the Code of Civil Procedure a suit is competent and, therefore, this Court, should not interfere in revision. In support of this objection the learned counsel relied upon the decisions in *Fazal Din* v. *Narain Singh* (1), *Daulat Singh* v. *Rup Narain* (2),*Bulakhidas* v. *Murlidhar* (3), *Sheetharamayya* v. *Rathamma* (4), *Narsingh Das* v. *Gulab Rai* (5), and *Keshar-Deo* v. *Radha Kishen* (6). Barring the last-mentioned decision, the other decisions do support the contention of the learned counsel. Mr. Ganga Parshad Jain in reply to the preliminary objection has relied on a decision of the Madras High Court in *Vasantarajan* v. *Parvathammani* (7), wherein it was observed as follows:—

> "As a remedy by way of a suit is open to the aggrieved party the High Court will not as a general rule interfere in revision in cases arising under section 73. This, however, does not mean that the High Courts cannot interfere in revision at all because

(1) 128 P.R. 1906.
(2) A.I.R. 1932 Lahore 96.
(3) A.I.R. 1940 Nag. 302.
(4) A.I.R. 1935 Mad. 399.
(5) A.I.R. 1935 Pat. 201(2).
(6) A.I.R. 1953 S.C. 23.
(7) A.I.R. 1954 Mad. 201.

where the lower Court acts without jurisdiction or declines to exercise jurisdiction or the remedy by suits is so inconvenient as to practically amount to no remedy or is manifestly wrong or the result of the suit if brought would be a definite success, a revision will lie. The words "illegally" and 'material irregularity' do not cover either errors of fact or law and they do not refer to the decision arrived at but to the manner in which it is reached and the errors contemplated relate to material defects of procedure and not to errors of either law or fact after the formalities which the law prescribes have been complied with."

These observations are of no assistance to the learned counsel. The fact of the matter is that in this case also the revision petition against an order under section 73 of Code of Civil Procedure was dismissed. In my view there is merit in the preliminary objection. I, therefore, allow the preliminary objection, with the result that this petition is rejected.

However, as the matter was argued on the merits as well, it is proper that the question which was debated in the Court below should also be answered. The operative part of section 73, on which the controversy is raised before me, reads thus—

"73(1) Where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization,

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shall be rateably distributed among all such persons."

Mr. Ganga Parshad Jain contends that the words "application to the Court" necessarily mean that the application for execution of the decree should be made to the Court which is holding the assets and an application made to the Court which passed the decree is of no consequence. It is common ground that application has to be made before the assets are received by a Court. Mr. Sarin, on the other hand, contends that the words "application to the Court" should be read along with the further words" for the execution of decrees for the payment of money" and, according to him, these words necessarily lend a clue to the true interpretation of section 73. According to the learned counsel these words signify that the application for execution has to be made to the Court which passed the decree, because the words are "application to the Court for the execution of decrees." It is common ground that applications for execution have to be made under the Code of Civil Procedure to the Court which passed the decree and to no other Court. Therefore, the words 'the Court' indicate that the applications have to be made to the appropriate Court which passed the decree. On the other hand, Mr. Ganga Parshad would have recourse to section 63 of the Code of Civil Procedure for determining the interpretation of section 73, particularly the words 'the Court'. Section 63 was enacted for a totally different contingency, the contingency being that if there are number of decrees of different Courts and all the Courts are seeking to attach the same assets, which Court would be allowed to attach and realise those assets. Section 63 has nothing to do with the interpretation of section 73, and if at all it has anything to do with it, it certainly supports the contention of the learned counsel for the respondent. To me, the contention of Mr. Sarin appears to be correct.

Section 73 of the Code merely sets out the pre-requisite conditions before rateable distribution can be allowed. It does not, in terms, say that application for execution has to be made to the Court where the assets are lying. Under the law, application for execution has to be made in the Court which passed the decree. The application for execution goes to another Court only by transfer. No application for execution can be made directly to a Court which did not pass the decree merely on the ground that that Court holds the assets of the judgment-debtor. In this situation, one cannot attach too much importance to the article 'the' in section 73 of the Code on the basis of which the entire argument of Mr. Ganga Parshad has been founded.

However, the matter is not *res integra*. There is a direct authority of the Bombay High Court taking the view which I have taken: See in this connection, *Dhirendra Rao* v. *Virabhadrappa* (8). At page 177, the learned Chief Justice observed as follows:—

> "It is to be noticed that the wording of section 73 differs materially from the wording of section 295 of the former Code which it replaced. That section dealt, not with the assets held by the Court, but with assets which had been realised by the Court, and instead of referring, as the present section does, to an application to the Court for the execution of a decree, it refers to an application to the Court which has realised the assets, so that there could be no doubt that under the old section the Court to which an application had to be made was the Court which had realised the assets. It is not so clear in the present section that the Court to which the application has to be

(8) A.I.R. 1953 Bom. 176.

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made must be the Court which holds the assets, and may not be the Court which granted the decree. But we are not concerned in this case with the construction of section 73 except in a case which is dealt with by the Court under section 63. In a case of that nature it seems to me to be clear that sections 63 and 73 must be read together. Section 63, on the facts of the present case, in substance prevents the holders of decrees of inferior Courts from enforcing those decrees and imposes upon the superior Court, that is the Court of the First Class Subordinate Judge, the duty of distributing the assets and thereby, in effect, executing not only the decree of his own Court, but the decree of the inferior Court. In such a case it would certainly be a hardship on the holders of the decrees of the inferior Court if they could not claim any share in the execution carried out by the superior Court, unless, before the moneys were received by the superior Court, they had not got their decrees transferred to that Court. Such procedure would involve considerable expense and, moreover, the holders of decrees in the inferior Courts might not hear of the proceedings of the superior Court until after the receipt of the assets to be distributed, when it would be too late to share. So that considerations of equity and common sense suggest that in a case in which the Court is determining under section 63 the right to rateable distribution, the true construction of section 73 is that an application need only have been made to the Court which granted the decree before the receipt of the assets and need not be made to the Court

which holds such assets. In other words, the Court to which application for execution must be made means appropriate Court and includes an inferior Court which granted a decree to be executed."

In a Full Bench decision of the Hyderabad High Court reported as *Commercial and Industrial Bank* v. *Mir Sarfaraz Ali Khan* (9), it was held as under:—

> "It is equally clear on a reading of the said section that there is no justification for the interpretation sought to be put by the learned advocate for the petitioner, that the decree-holders must, as a *sine qua non*, for obtaining orders for rateable distribution, have their decrees transferred to the distributing Court and apply for rateable distribution to that Court, before the assets are received in that Court.
>
> All that the section requires is that the decree-holder in order to be entitled to the rateable distribution should have taken execution proceedings before the assets are received in the Court distributing them."

It may be mentioned that the provisions of section 371 of the Hyderabad Code of Civil Procedure are almost identical with the provisions of section 73 of the Code of Civil Procedure.

It will also be useful to refer to the observations of the Madras High Court in *Abdul Salam* v. *Virabhadra* (10), which are to the effect that "the purpose of section 73 is that there should be an equitable distribution of assets between those creditors who have been diligent enough to obtain decrees and put in

(9) A.I.R. 1956 Hyd. 65.
(10) A.I.R. 1929 Mad. 703 (F.B.).

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execution applications before the time such assets have been received. Court should rather look to the substance than to the form of the application in order to administer the equity which the law provides." The contention of Mr. Ganga Parshad, however, does find support from the decision in *Katikala Subbayyamma v. Penmesta Bangarraj* (11). In this case, Mr. Justice Chandrasekhara Sastry observed as under:—

> "In order to entitle the decree-holders of different decrees for money against the same judgment-debtor to claim rateable distribution under section 73 they must have applied for execution of their respective decrees, before the receipt of such assets to the Court which received the assets. Otherwise, they cannot claim rateable distribution under that section."

With utmost respect to the learned Judge, I am of the view that too narrow an interpretation has been put on section 73 of the Code. The argument which prevailed with the learned Judge loses sight of the fact that under the law applications for execution have to be made to the Court which passed the decree. In this connection, reference may be made to section 38 of the Code which provides that the decree may be executed either by the Court which passed it or by the Court to which it is sent for execution. Section 39 of the Code provides for the transfer of the decrees. It is the Court which passed the decree which can send it, on the application of the decree-holder, or otherwise for execution to another Court. In this connection reference may also be made to Order 21, rule 10 of the Code.

I may also mention that Mr. Ganga Parshad Jain conceded that if the respondent had attached these

(11) A.I.R. 1961 A. P. 422.

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assets in the Court of the Senior Subordinate Judge after he had filed the execution application in the Court of the Subordinate Judge on 6th of August, 1963, he would be entitled to rateable distribution of the assets irrespective of the fact that no application was made for execution to the Senior Subordinate Judge. But he maintains that in case there is no attachment of the assets by that Court, it will make all the difference. I, however, see no basis for such a distinction in either of these two situations. Nor is there any rational basis for such a distinction.

From whatever angle the matter is examined I am clearly of the view that the requirements of section 73 are satisfied in this case, namely, that a decree was obtained by the respondent before the assets were received and so also an application for execution had been made in a proper Court.

For the reasons given above, I am of the view that there is no merit in this petition, which must accordingly fail and is hereby dismissed. There will, however, be no order as to costs.

B.R.T.

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