

due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in clause (1) of Article 291 with respect to the personal rights, privileges and dignities of the Ruler of an Indian State.

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I consider, therefore, that sufficient reason exists for the continuance of the privilege granted to Rulers under section 133 of the Code of Civil Procedure, which section has not been repealed, and that the privilege has not been abrogated by the coming into force of the Constitution. The matter is not one of discretion having regard to the facts of a particular suit before the Court. The privilege exists as it existed when it was granted.

I think, therefore, that this revision should be allowed, and the order of the Subordinate Judge disallowing the claim of privilege set aside. Costs to be costs in the suit.

FALSHAW, J. I agree.

APPELLATE CIVIL

Before Eric Weston, C.J., and Harnam Singh, J.

S. HARJANG SINGH,—Appellant,

versus

GOWARDHAN DAS AND OTHERS,—Respondents.

1951

Sept. 24th

Letters Patent Appeal No. 34 of 1948

Civil Procedure Code, Act V of 1908, Sections 2 (3) and 49—Decree-holder if includes transferee of a decree—Whether a judgment-debtor can claim equities under section 49 arising against the transferee from an original decree-holder.

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S obtained a final mortgage decree against H on the 18th August 1943, and thereafter assigned the same by an unregistered document to B. S. and H. S. On the same day B. S. and H. S. assigned it to G. D. also by an unregistered document. G. D. as assignee applied for the execution of the decree under Order 21, Rule 16, Civil Procedure Code. The application was rejected on the ground that the assignment deeds being unregistered no title passed to G. D. That very day H paid Rs 4,000 to B. S. and H. S. in full and final settlement of the decree. Ten days later S. by a registered document assigned the decree to B. S. and H. S. who in turn assigned it by a registered document to G. D. G. D. again applied for the execution of the decree under Order 21, Rule 16, C.P.C., and was met with the plea from H, the judgment-debtor, that the decree had been fully satisfied by him by paying Rs 4,000 to B. S. and H. S.

Held, that the payment of Rs 4,000 by H to B. S. and H. S. did not discharge the decree so as to effect the rights of G. D. to execute the same against H. The terms "decree-holder" in section 49, C.P.C., does not include a transferee of a decree and it cannot avail a judgment-debtor to claim equities arising against a transferee of a decree from the original decree-holder.

Letters Patent Appeal under clause 10 of the Letters Patent from the judgment of Hon'ble Mr Justice Falshaw of the High Court of Judicature at Simla, dated the 20th May 1948, passed in E.S.A. 2348 of 1945, reversing that of Shri Fateh Khan, District Judge, Jullundur, dated the 25th October 1945 (which reversed that of S Gurcharan Singh, Senior Sub-Judge, Jullundur, dated the 18th May 1945), and restoring the order of the executing Court declaring Gowardhan Das to be the transferee decree-holder in place of the original decree-holder.

K. L. GOSAIN, S. D. BAHRI and K. C. NAYYAR, for Appellant.

D. K. MAHAJAN and D. N. AWASTHI, for Respondents.

JUDGMENT

**Eric Weston
C. J.**

ERIC WESTON, C. J. This is a Letters Patent Appeal from a Judgment of Mr Justice Falshaw given on the 20th of May 1948, in Execution Second Appeal No. 2348 of 1945.

The facts of the case are these. On the 5th of July 1938, one Major Shuja-ud-Din obtained a final decree on the foot of a mortgage. On the 18th of August 1943 the decree-holder executed an unregistered document purporting to assign the decree in favour of two persons Bishan Singh and Harnam Singh, and on the same day Bishan Singh and Harnam Singh executed an unregistered document purporting to assign the decree to one Gowardhan Das. Gowardhan Das subsequently applied under Order XXI, Rule 16, of the Code of Civil Procedure to execute the decree but his application was rejected on the ground that the decree being a mortgage decree could not be assigned by an unregistered document. On the same day as that of the order of the Court dismissing the application of Gowardhan Das under Order XXI, Rule 16, Bishan Singh and Harnam Singh are said to have accepted Rs. 4,000 from the judgment-debtor in full and final settlement of the decree. Ten days later the original decree-holder Major Shuja-ud-Din made a further transfer of the decree in favour of Bishan Singh and Harnam Singh, this time by a registered document, and on the same day Bishan Singh and Harnam Singh in turn transferred the decree in favour of Gowardhan Das, also by a registered document. Gowardhan Das then filed a second application under Order XXI, Rule 16, which was resisted by the judgment-debtor on various grounds, the principal of which was that the decree had been fully discharged by the payment of Rs. 4,000 received by Bishan Singh and Harnam Singh, on the 22nd of July 1944.

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The executing Court held that as there was no valid transfer of the decree subsisting in favour of Bishan Singh and Harnam Singh, on the 22nd of July 1944, there had been no satisfaction of the decree. The application of Gowardhan Das under Order XXI, Rule 16, therefore, was allowed. In appeal to the District Court this order was reversed by the District Judge, who held that Gowardhan Das was not a valid transferee of a subsisting decree. In second appeal to the High Court of Lahore a remand order was made

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for determination whether the payment of Rs. 4,000 on the 22nd of July 1944 had in fact been made. The trial Court on remand held that this payment had been made. The matter again went to the District Court and the District Judge in his report supported the finding of his predecessor. The appeal then came before Mr Justice Falshaw, who held that the finding of the executing Court that no valid assignment of the decree subsisted in favour of Bishan Singh and Harnam Singh, on the date on which they gave the judgment-debtor his discharge was correct. He, therefore, allowed the appeal and restored the order of the executing Court.

Before us it has been argued that section 49 of the Code of Civil Procedure has application to this case. It is claimed that by reason of the payment of Rs 4,000 which has been found to have been made to them Bishan Singh and Harnam Singh, who had acquired a valid title to the decree by the registered document of the 1st of August 1944, were not entitled in equity to execute the decree and their transferee Gowardhan Das was subject to the equities held by the judgment-debtor against Bishan Singh and Harnam Singh and equally was debarred from executing the decree.

Section 49 provides—

“Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.”

“Decree-holder” is defined by section 2 (3) of the Code as “any person in whose favour a decree has been passed or an order capable of execution has been made”. “Decree-holder” does not include “transferee of a decree” as it did under the definition of the

Code of 1882. Section 49 is a reproduction of section 233 of the Code of 1882. Apart from the fact that a decree-holder cannot now be said to include a transferee the matter is placed beyond question by the adjective "original" appearing in section 49. It is clear that section 49 cannot avail a judgment-debtor to claim equities not only against the original decree-holder but against a transferee from the original decree-holder.

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On the argument that equities should be enforced apart from section 49, Gowardhan Das is a transferee from Bishan Singh and Harnam Singh. Issue No. 3 disposed of by the executing Court in its judgment dated the 18th of May 1945, was in these terms—

“Whether the said assignment of the decree in favour of Gowardhan Das is invalid, illegal and without consideration?”

and the finding on this issue was against the judgment-debtor. I must take it, therefore, as a fact found that there was consideration for the valid transfer of the decree by Bishan Singh and Harnam Singh in favour of Gowardhan Das. Clearly, therefore, equities arise in favour of Gowardhan Das, and when the payment made by the judgment-debtor to Bishan Singh and Harnam Singh was a payment which to the knowledge of the judgment-debtor was made to persons not then entitled to any payment, for the Court had just held the assignment in their favour to be inoperative, any equities in favour of the judgment-debtor must, in my opinion, be subordinate to the equities in favour of Gowardhan Das. Dishonesty may have been shown by Bishan Singh and Harnam Singh but the judgment-debtor must take his own remedy to recover from them and the rights of Gowardhan Das must be upheld. I think, therefore, the decision of the learned Single Judge was correct and I would dismiss this appeal with costs.

HARNAM SINGH, J. I agree.