Present : Pereira J. and Ennis J.

1913.

SINNATAMBY *v.* KALAMUTTU

97—D. C. Chilaw, 4,566.

Payment of money in satisfaction of decree—Application to refund excess—Civil Procedure Code, ss. 344 and 349.

Defendant paid plaintiff a certain sum of money in satisfaction of the decree. He subsequently discovered that he had paid in excess of the amount actually due. An application by the defendant to compel plaintiff to refund the excess is one that involved questions relating to the execution of the decree, and it fell well within the scope of section 344 of the Civil Procedure Code. The mere fact that after such an application and before final order on it plaintiff, with defendant's consent, had satisfaction of the decree certified under section 349 of the Code did not prejudice the defendant's right to press his application to a decision.

THE facts appear from the judgment.

J. Grenier, K.C., for appellant.

Sansoni, for respondent.

Cur. adv. vult.

September 10, 1913. PEREIRA J.—

In this case it appears that the defendant paid the plaintiff a certain sum of money in satisfaction of the decree. He subsequently discovered that he had paid the plaintiff in excess of the

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PEREIRA J.

Sinnatamby v. Kalamuttu

amount actually due to him on the decree, and on May 7, 1913, he (the defendant) moved for a notice on the plaintiff to show cause why he should not refund Rs. 691.07 " recovered by him in excess of the amount due to him under the decree. " It is said that this sum, Rs. 691.07, is not the correct amount paid in excess, and that it was so understood by all parties at the hearing of the defendant's application. Be that as it may, clearly the motion of the defendant was, at the stage of the proceedings in which it was made, a motion that fell well within the scope of the provision of section 344 of the Civil Procedure Code. It involved questions relating to the " excution of the decree. " The notice asked for was allowed and served on the plaintiff and July 11, 1913, was fixed for the discussions of the matter. On that day, as a preliminary step, apparently on the motion of the plaintiff's proctor, consented to by the defendant's proctor, payment of the decree was certified under section 349 of the Civil Procedure Code. The moment that was done, the plaintiff's proctor contended that the " case was closed, " and nothing further could be done in it on the defendant's motion for an order on the plaintiff to refund the amount paid to him in excess of the sum actually due to him, and the District Judge relying on certain decisions of the Indian Courts cited to him disallowed the defendant's motion. The same decisions have been cited to us, and on a careful examination of them, it seems to me that they have no application to the peculiar circumstances of the present case. As observed already, the defendant's application, when it was made, was quite in order as an application under section 344 of the Civil Procedure Code. What the Court had to decide was how much was actually paid by the defendant to the plaintiff in satisfaction of the decree. In the course of the inquiry the plaintiff's proctor, as a preliminary step, moved to certify satisfaction of the decree. In the circumstances in which this motion was made, the order on it amounted to no more than the placing on record of the fact that the defendant had paid the plaintiff at least the amount of the decree. How much more was paid had yet to be ascertained. Clearly, the intention of the parties—of the defendant's proctor at any rate—was not to close the proceedings by certifying satisfaction of the decree. The object of the motion and the effect of the order on it are as I have explained above.

I would set aside the order appealed from, and remit the case to the Court below to ascertain how much was paid by the defendant to the plaintiff in excess of the exact amount due to him on the decree, and for an order on the plaintiff to refund the excess, if any. I think that the defendant should have her costs of appeal, and that costs in the Court below should abide the event.

ENNIS J.—I agree.

Set aside.