

1944

Present: Howard C.J. and Keuneman J.

RANASINGHE, Appellant, and SAHIRA UMMA, Respondent.

10—D. C. Kegalla, 1,175.

Decree—Satisfaction of decree by agent of judgment-debtors—Certification of payment—Civil Procedure Code, s. 349.

Where a decree is satisfied by a third party acting on behalf of the judgment-debtors, payment may be certified under section 349 of the Civil Procedure Code on the application of the judgment-debtors.

A PPEAL from an order of the District Judge of Kegalla.

H. V. Perera, K.C. (with him *E. B. Wikremanayake*), for substituted plaintiff, appellant.

S. J. V. Chelvanayagam (with him *M. I. M. Haniffa*), for first to third defendants, respondents.

Cur. adv. vult.

July 21, 1944. KEUNEMAN J.—

In this case judgment was entered on October 5, 1939, in favour of the three original plaintiffs against the 1st to the 3rd defendants for Rs. 12,000 and interest, and a hypothecary decree was entered. On October 28, 1940, the decree was assigned to the appellant, who was substituted as plaintiff.

Admittedly payments had before the assignment been made under the decree, and the only sum now claimed by the substituted plaintiff is Rs. 506.32 as principal and Rs. 813.18 as interest, making a total of Rs. 1,319.40.

The 1st to the 3rd defendants have applied that satisfaction of the decree be entered under the following circumstances:—

In his affidavit the 1st defendant states that shortly after the decree was entered he sold some of the mortgaged lands to Sumana Karunawathie, who undertook to satisfy the claim of the original plaintiffs in this action out of the consideration of the deed of transfer, and that a sum of Rs. 10,693.68 had been paid by her in full satisfaction.

It is in evidence (*see* document A 1) that Karunawathie had a claim against the original plaintiffs for Rs. 2,134. She sued for this amount in D. C. Kegalla, 1,264, and decree was entered in her favour. But by a settlement incorporated in that decree, the original plaintiffs in this case undertook to deduct this sum of Rs. 2,134 from the amount due in the present case, and to accept the balance due in this case, after this deduction, in satisfaction of the decree in the present case. Thereafter Karunawathie paid the whole amount due in this case—less the deduction mentioned—and in fact, as it turns out, she paid more than was necessary under that arrangement.

It is admitted that section 345 of the Civil Procedure Code does not apply in this case, because the cross-decrees are not between the same parties, but the respondents contend that this adjustment can be certified as an adjustment of the decree to the satisfaction of the decree-holder within the terms of section 349.

The appellant's answer is that the settlement was not between the decree-holder and the judgment-debtors, and that the settlement in D. C. Kegalla, 1,264 was only executory and did not result in satisfaction of the present decree.

I think the affidavit of the 1st defendant shows that in D. C. Kegalla, 1,264 Karunawathie, though undoubtedly acting in her own interest, was also acting for the present defendants. The settlement may therefore be regarded as made by her as agent of the present defendants. At the least, it was a settlement made by her for the benefit of the present defendants, and under our law the present defendants can take advantage of it. It is clear that the original plaintiffs were consenting parties.

Further, before the date of the assignment to the substituted plaintiff, Karunawathie paid the whole of the balance due in the present case, less the sum of Rs. 2,134, for which the original plaintiffs had consented to give credit in this case. The effect of this payment was to extinguish the decree in the present case. (See in this connection *Ponnamparuma v. Wickremanayake*¹.)

In the circumstances I am of opinion that the defendants are entitled to claim that this adjustment should be certified. The substituted plaintiff as the transferee of the decree held the same "subject to the equities (if any) which the judgment-debtors might have enforced against the original decree-holder." (See section 340.)

The District Judge did not order that the adjustment should be certified. In this he was wrong, and I now make order that the adjustment which I have referred to be certified. Subject to this, the appeal is dismissed with costs.

HOWARD C.J.—I agree.

Judgment varied.
