

1951

Present : Gratiaen J. and Gunasekara J.

MURUGESU, Appellant, and SADDANATHAR, Respondent

S. C. 65—D. C. Point Pedro, 2,979

Execution proceedings—One decree seized in execution of another decree—Position of seizing creditor—His right to claim costs of execution—Civil Procedure Code (Cap. 86), ss. 234 (1), 339.

Where a judgment-creditor in one action seizes a decree entered in favour of his judgment-debtor in another action and has himself substituted as plaintiff in the latter action in terms of Section 339 of the Civil Procedure Code, he is entitled to claim, as the decree holder, his costs of execution and, indeed, the total amount payable under the decree in the latter action.

APPEAL from a judgment of the District Court, Point Pedro.

V. *Arulambalam*, for the substituted plaintiff appellant.

No appearance for the plaintiff respondent.

Cur. adv. vult.

July 18, 1951. GRATIAEN J.—

The appellant had obtained a decree for Rs. 410.03, interest and costs against the respondent in D. C. 52 Summary of the District Court of Point Pedro. In the meantime the respondent obtained in his favour a decree for Rs. 500, interest and costs in the present action against certain judgment-debtors. The appellant thereupon seized the decree in the respondent's favour in this action in execution of the decree in D. C. 52 Summary, and at a later date applied for, and obtained, an order of Court substituting him as plaintiff in the place of the respondent in terms of Section 339 of the Civil Procedure Code. In the result, the appellant became the only party entitled to execute the decree in these proceedings, and his judgment-debtor, the original plaintiff, had no further status in the action. *Sivasampoe v. Chelvarayan*.¹

On February 17, 1950, the appellant, in his capacity as substituted plaintiff, applied for execution of the decree in the present action. The application was allowed by the learned District Judge on February 25, 1950. On July 29 one of the judgment-debtors deposited to the credit of the action Rs. 832 which was presumably the full amount payable under the decree. The appellant's Proctor then applied to draw a sum of Rs. 795.93 representing Rs. 669.25 being the sum due to him under the decree in D. C. 52 Summary, and Rs. 125.93 being the costs of execution incurred by him in the present action. The respondent

¹ (1931) 34 N. L. R. 84.

now re-appeared on the scene and raised an objection that the appellant should not be permitted to draw any sum in excess of the amount due to him under the decree in D. C. 52 Summary. The learned District Judge decided in the first instance to call for and obtain a report from the Secretary of the Court. The Secretary's report is in the following terms:—

“ The substituted plaintiff is the decree holder in 52 Summary. As such he is only entitled to recover from this case the actual amount due on account of 52 Summary. In trying to recover that amount if he incurs any expenditure, that is his lookout.”

On October 12, 1950, the learned District Judge, having heard the parties, seems to have adopted the reasoning of the Secretary. In the result he ordered that the appellant should be permitted to draw Rs. 669.25 only out of the sum deposited to the credit of the action.

We have not had the advantage of any argument on behalf of the respondent in support of the order appealed from. It seems to me, however, that the appellant is clearly entitled to succeed if the question be examined, as I think it must, by reference to the provisions of Section 339 of the Code. The appellant has, rightly or wrongly, been substituted in these proceedings in place of the respondent, who was the original judgment-creditor. As such, he alone became entitled, as against the judgment-debtor in the action, to execute the decree with which we are now concerned. The position of the respondent may well have been different if, upon the seizure of the decree, an order of the Court had been made merely directing the proceeds to be applied in satisfaction of the decree in D. C. 52 Summary—vide *Section 234 (1) of the Code*. The order made under Section 339 however places the appellant in a position of far greater advantage, and the rights which he now enjoys under the present decree cannot be restricted in the manner indicated by the learned District Judge. He alone is now the judgment-creditor in these proceedings, and I fail to see on what principle of law he can be prevented from claiming, as the decree holder, his costs of execution and indeed (as far as the judgment-debtors are concerned) the total amount payable under the decree. Such claims as the respondent may subsequently seek to prefer against the appellant in respect of any alleged over-payment must be decided in other proceedings the nature of which it is not necessary for me to express an opinion in the present case.

I would set aside the order appealed from and allow the appellant's application for an order of payment in his favour for Rs. 795.18. The respondent must pay to the appellant the costs of this appeal and of the inquiry in the Court below.

GUNASEKARA J.—I agree.

Order set aside.