

GRERO
v.
RATNAYAKE

COURT OF APPEAL
TAMBIAH, J. AND H. A. G. DE SILVA, J.
C.A. 187/77 (M.C. CIVIL) WITH
C.A. 188/77 (M.C. CIVIL)
MC COLOMBO 479/ED AND 480/ED
MARCH 9, 1983.

Landlord and tenant—Arrears of rent—Compromise—Do rules of appropriation apply to a consent decree ?

Held —

The rules of appropriation under the Roman Dutch Law do not apply to judgment debts. A court cannot apportion payments in a way it thinks just.

Although the force of a consent decree is derived from the *consensus ad idem* of the parties (it having received the additional validity of being accepted by the Court) it cannot be set aside by the consent of the parties as any other contract could have been, but can only be vacated by the Court by a proper proceeding in that behalf.

Cases referred to

1. *Silva v. Leiris Appu* 1 C.L.J. 31, 32, 33
2. *Thiruvambala v. Chinna Pandaram* AIR 1917 Madras 578, 588
3. *The Bellcairn* (1885) 10 P.D. 161, 55 L.J.P. 3

APPEAL from orders of Magistrate disallowing applications for writ

P. A. D. Samarasekera for plaintiff-appellant

H. M. P. Herath for defendant-respondent

May 16, 1983

TAMBIAH, J.

The plaintiff-appellant filed three actions — Cases Nos. 478/ED, 479/ED and 480/ED — against the defendant-respondent to eject him from premises Nos. 75/1, 71 and 72, Church Road, Mattakkuliya, on the ground of arrears of rent. Case No. 478 was in respect of premises No. 75/1, Case No. 479 in respect of premises No. 71, and Case No. 480 in respect of premises No. 72.

On the trial date, on 11.11.76, the three cases were settled on the following terms:— Commencing December 1976, on or before the last day of every month, the respondent to pay, inclusive of arrears, current monthly charges and costs, Rs. 154/48 in respect of premises No. 75/1 ; Rs. 154/14 in respect of premises No. 71, and Rs. 99/72 in respect of premises No. 72, totalling Rs. 408/34. If the said payments are made on the due dates without a single default, the respondent to be accepted as new tenant and to continue in occupation. If the respondent makes a single default, writ of ejectment to issue, without notice.

The respondent on 11.12.76 paid the appellant Rs. 408/-, instead of Rs. 408/34, and continued to pay Rs. 408/- up to June 1977. The appellant accepted the same and issued receipts to the following effect :—

“ Received as part payment of arrears, damages and costs, Rs. 154,37, in respect of Case No. 478; Rs. 154/03 in respect of Case No. 479, and Rs. 99/60 in respect of Case No. 480, without prejudice to issue writ of possession and writ for recovery of balance arrears and damages and costs due in the above cases. ”

In July 1977, the appellant applied for writ in all three cases.

In the course of his Order, the learned Magistrate stated that the respondent was under a duty and was bound to pay the

decreed amount and that there was no excuse for his default. He, however, took the view that the landlord had acted unfairly and that in the interests of justice he ought to have appropriated the sum of Rs. 408/- to the amounts due under the decrees entered in two of the cases and the balance as part-payment of the decreed amount in the third case. The learned Magistrate, accordingly, allocated the sum of Rs. 408/- as follows :—

- (1) Rs. 154.14 being monthly rent in respect of premises No. 75/1, subject matter of case No. 478/ED.
- (2) Rs. 154.14 being monthly rent in respect of premises No. 71, subject matter of case No. 479/ED.
- (3) Rs. 99.72 being monthly rent in respect of premises No. 72, subject matter of case No. 480/ED.

The learned Magistrate, in the result, allowed the issue of writ in case No. 478/ED, and disallowed the issue of writs in cases Nos. 479/ED and 480/ED. An appeal was preferred from the order in case No. 478/ED and learned attorneys informed us that the matter has been concluded in appeal.

The question that arises in appeal is whether the learned Magistrate was right in apportioning the sum of Rs. 408/- in the way he did and in disallowing the issue of writs in cases Nos. 479/ED and 480/ED.

Learned attorney for the appellant submitted that the learned Magistrate has erred in applying the rules relating to appropriation as the rules do not apply to judgment debts.

In *Silva v. Leiris Appu* (1) it was held that the rules of appropriation under the Roman Dutch Law do not apply to the case of a judgment debt. Koch, J. said (pgs. 32, 33)—

“ Now it is clear that our common law in regulating appropriation of payments stresses consideration of

advantage to the debtor and in doing so appropriates a payment to the most onerous debt . . . but can it be said that the rules of appropriation apply even after a decree has been entered ? I think not, for I feel that these rules were intended to govern the contracting parties so long only as actual contractual relations exist. Once the intervention of a Court has been sought and once a decree has been entered, the contractual relations are determined and the liability of one to the other is no longer under the contract but under the decree which takes its place and which is the formal expression of the results arrived at by the judgment. The parties thereupon pass out of the domain of contract and enter that of a decree . . . The common law relations of the parties appear to be at an end at the moment a decree is entered and fresh rights and obligations emerge from under the decree which can be enforced procedurally in terms of the Civil Procedure Code. "

This case supports the contention of learned attorney for the appellant.

Does the contractual relation cease to exist where a decree is entered of consent ? Learned attorney for the respondent relied on a passage in Chitale's Code of Civil Procedure (Vol. 3, 3rd Ed., at p. 2500) which states—

" A compromise decree is a creature of the agreement in which it is based and is subject to all the incidents of such agreement. A compromise decree is but a contract with the command of a Judge super-added to it. Hence such a decree is of no greater validity than the contract on which it is based. It can, therefore, be set aside on any of the grounds, such as fraud, mistake, misrepresentation, etc. on which a contract may be set aside. "

It was his submission that in a compromise decree, the contractual relation still subsists and therefore the rules of appropriation will apply.

I am unable to agree. Under s. 408 of the Civil Procedure Code, it is the duty of the trial Judge to enter a decree in accordance with the terms of settlement. The passage just cited only lays down that greater validity cannot be given to the consent decree than to the agreement on which it is based merely because in the decree the agreement has received judicial sanction, and that a consent order could be impeached upon any grounds which would invalidate an agreement between the parties. If learned attorney for the respondent is correct in stating that the contractual relation remains despite the entering of a consent decree, then the parties ought to be able to set aside the consent decree by mutual consent as in the case of any other contract. But can they do that? In *Thiruvambala v. Chinna Pandaram* (2) Wallis, C.J. said—

“ At the same time it is well settled that until the decree based on the compromise is recalled it is binding on the parties to the suit. Lord Esher in *The Belcairn* (3) says :

“ I agree with Butt, J., that when at a trial the Court gives judgment by the consent of the parties it is a binding judgment of the Court and cannot be set aside by a subsequent agreement between the solicitors. ”

I take the reason of the rule to be that although the force of a consent decree is derived from the consensus *ad idem* of the parties (it having received additional validity by being accepted by the Court) it cannot be set aside by the consent of the parties as any other contract could have been but can only be vacated by the Court by a proper proceeding in that behalf. ”

It seems to me, therefore, that rules of appropriation do not apply whether it be a case of a consent decree giving effect to a

compromise agreement or a decree entered upon a contest between the parties.

The appeals in cases Nos. 479/ED and 480/ED are allowed and the order of the learned Magistrate dated 31.10.77 is set aside. The appellant will be entitled to the issue of writs in both these cases. There will be no costs.

H. A. G. DE SILVA, J. — I agree.

Appeals allowed.