

Civil Procedure Code, 1908 (V of 1908) , O.21 R.16— Equitable assignment.

The first thing that strikes one is the sequence of events contemplated by O. 21, R. 16. It postulates first, that a decree has been passed and secondly, that that decree has been transferred (1) by assignment in writing or (ii) by operation of law.(Para 2)

*The learned Chief Justice, like Dixit, J., however, departed from the rule of strict or literal construction as they felt pressed by the fact that the Bombay High Court had consistently taken the view that there might be an equitable assignment of a decree which would constitute the assignee an assignee for the purpose of Rule 16 and that what the Court must consider is not merely a legal assignment but also an assignment which operates in equity. The equitable principle relied upon by the Bombay High Court is what had been enunciated by Lord Westbury in **Holroyd v. Marshall 1862 10 HLC 191 at pp. 210-11** in the following words:*

“It is quite true that a deed which professes to convey property which is not in existence at the time is as a conveyance void at law, simply because there is nothing to convey. So in equity a [contract](#) which engages to transfer property, which is not in existence, cannot operate as an immediate alienation merely because there is nothing to transfer.

But if a vendor or mortgagor agrees to sell or mortgage property, real or personal, of which he is not possessed at the time, and he receives the consideration for the contract, and afterwards becomes possessed of property answering the description in the contract, there is no doubt that a Court of Equity would compel him to perform the contract, and that the contract would, in equity, transfer the beneficial interest to the mortgagee or purchaser immediately on the property being acquired. This, of course, assumes that the supposed contract is one of that class of which a Court of Equity would decree the specific performance.”

The same principle was thus reaffirmed by Jessel, M.R, in **Collyer v. Isaacs LR 19 Ch D 342 at p. 351**:

“A man can contract to assign property which is to come into existence in the future, and when it has come into existence, equity, treating as done that which ought to be done, fastens upon that property, and the contract to assign thus becomes a complete assignment.”

To attract the application of the principle of equitable assignment of decree there must be an agreement to transfer the decree to be passed in future. As soon as the decree is passed equity fastens upon it and, by treating as done what ought to be done, that is, by assuming that the transferor has executed a deed transferring the decree to the transferee as in all conscience he should do, equity regards the transferee as the beneficial owner of the after-acquired decree. The equitable principle only implements or effectuates the agreement of the parties. This equity does not, however, take upon itself the task of making any new agreement for the parties either by filling up the lacuna or gap in their agreement or otherwise. If, therefore, there is no agreement between the parties to transfer the future decree the equitable principle cannot come into play at all.(Para 3)Where during the

pendency of a suit on a book debt the plaintiff in that suit transfers all book and other debts due to him it cannot be said, in the absence of mention, in the document, of transfer of the suit or the decree to be passed, that the transferor intended to transfer the future decree also. The transfer, in writing, of a property which is the subject- matter of a suit without in terms transferring the decree passed or to be passed in the suit in relation to that property area not entitle the transferee to apply for execution of the decree as a transferee of the decree by an assignment in writing within the meaning of O. 21, R. 16. AIR 1914 Bom 426, Rel. on.(

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