

APPELLATE CIVIL.

Before Lord-Williams and Nasim Ali J.J.

1934

March 13.

SHACHEENDRABHOOSHAN RAY

v.

PRAMATHANATH RAY.*

Execution—Sale of portion of property—Injunction restraining sale of remainder.

In principle there is no objection to an execution sale proceeding in respect of the remaining part of the judgment-debtor's property, where an injunction has been issued by another court restraining the sale of part of the same property claimed by a plaintiff in another suit.

APPEAL FROM ORIGINAL ORDER by the judgment-debtors.

The facts of the case and the arguments advanced at the hearing of the appeal appear sufficiently in the judgment.

Hemendrachandra Sen and *Jaygopal Ghosh* for the appellants.

Roopendrakumar Mitra and *Bijanbihari Mitra* for the respondent.

LORT-WILLIAMS J. This appeal arises out of a sale in execution of a mortgage decree. The mortgagor had mortgaged a one-sixth share in certain property, and, in the sale proclamation, it was stated that this one-sixth share of the property, which belonged to the judgment-debtor, would be sold. Subsequently, however, a third party brought a suit against both the decree-holder and the judgment-debtor in this suit, stating that a part of the property belonged to him, and all that the judgment-debtor owned was a twelfth share. That suit, having been

*Appeal from Original Order, No. 32 of 1933, against the order of K. P. Bagchi, Second Subordinate Judge of 24-Parganas, dated Dec. 8, 1932.

filed, an application was made to that court asking for an injunction restraining the sale of the share of this property claimed by the plaintiff in that suit. An injunction was granted and communicated to the executing court with the result that that court made an order that the sale proclamation should be sent to the *nâzir* for sale with the direction that a twelfth share only of the properties mentioned therein should be sold. On this, an application was made under section 47 of the Code of Civil Procedure by the judgment-debtor, which is described by the Subordinate Judge as being one praying for stay of sale of this one-twelfth share. The real effect of the application, however, seems to have been that the judgment-debtor contended that the court had no jurisdiction to allow the sale to proceed of the one-twelfth share only, and that, in view of the order of injunction made by the other court, the executing court ought not to proceed with any part of the sale of the judgment-debtors' property.

1934

*Shacheendra-
bhooshan
Ray*

v.
*Pramathanath
Ray.*

Lort-Williams J.

The Subordinate Judge disagreed with the contention raised on behalf of the judgment-debtor and we are of opinion that his decision was right. No authority bearing on the point had been cited before him and no authority has been cited before us. In principle, we can see no objection to the sale proceeding in respect of the remaining part of the judgment-debtor's property. There seem to be sound reasons in law why the judgment-debtor's application ought to be refused, because, in view of the fact that the injunction granted only applies to half of the property mortgaged, no bar has been imposed by the court against the decree-holder proceeding with the execution of his decree, so far as the balance of the property is concerned. Therefore, there is no order of the court, which will prevent limitation running against the decree-holder, with regard to this portion of the property. For this reason alone, it appears to us that the decision of the learned Subordinate Judge was right. The argument, raised to the effect

1934

*Shacheendra-
bhooshan
Ray*

*v.
Pramathana'h
Ray.*

Lord-Williams J.

that the sale of a small share of this property would have the result of lessening its value in the market, is one which might have been considered by the learned judge, if he had been disposed to exercise his discretion in the matter and make an order staying the sale. Whether or not this point can be raised in the proceedings now pending under Order XXI, rule 90 of the Code, we do not at present decide.

This appeal is, accordingly, dismissed with costs—three gold mohurs.

NASIM ALI J. I agree.

Appeal dismissed.

G. S.