

PRINSEP, J.—I am of the same opinion. I would only add that I have always considered the judgment in the case of *Gopee Nath Dobay v. Roy Luchmeeput Singh* (1) as bearing the interpretation put upon it by my learned colleague, and in that view, I have followed that judgment in other cases decided by me while sitting in other Division Benches of this Court.

1881
BONOMALI
MOZUMDAR
v.
WOOMESH
CHUNDER
BUNDO-
PADHYA.

Appeal dismissed.

Before Mr. Justice Prinsep and Mr. Justice Field.

KRISTOMOHINY DOSSEE (DECREE-HOLDER) v. BAMA CHURN NAG
CHOWDRY AND OTHERS (JUDGMENT-DEBTORS).*

1881
August 29.

*Execution—Mortgage-Decree—Stay of Sale pending Administration-Suit—
Appealable Order—Civil Procedure Code (Act X of 1877), s. 244, cl. (c).*

In execution of a decree on a mortgage-bond executed by the father of the judgment-debtors, since deceased, which decree directed that the mortgage lien should be enforced—*first*, by sale of the property specifically mortgaged; and *secondly*, if the debt remained unsatisfied, by the sale of the other property in the possession of the judgment-debtors, the judgment-creditor proceeded to have the mortgaged property sold. After the issue of the sale-notification, and three days prior to the date fixed for the sale, one of the judgment-debtors applied to have the sale stayed, on the ground that an administration-suit was pending with respect to the property of his father, the mortgagor, and also asked that a receiver might be appointed and arrangements made for the purpose of paying off the mortgage-debt and saving the property from being sold. On this application the Court passed an order staying the sale.

Held, that such order was appealable, being a question arising between the parties to the suit in which the decree was passed and relating to the execution of that decree, and as such coming within the provision of cl. (c), s. 244, Act X of 1877 (Civil Procedure Code).

Held also, that the Court was wrong in passing such order, inasmuch as there were no reasonable grounds why a secured creditor should be debarred from enforcing his security pending the administration-suit.

Gumbhirmal and Bana Chand v. Chejmal Jodhmal (2) distinguished.

* Appeal from Original Order, No. 180 of 1881, against the order of Baboo Krishna Mohun Mookerjee, Second Subordinate Judge of the 24-Parganas, dated the 2nd May 1881.

(1) 1 C. L. R., 349.

(2) 11 Bom. H. C. R., 151.

1881 THIS was an appeal against an order staying the sale of
 KRISTO- mortgaged property in execution of a decree obtained on the
 MOHINY mortgage.
 DOSSEE
 2. The facts appear sufficiently from the judgment of the High
 BAMA CHURN Court,
 NAG CHOW-
 DEY.

Baboo *Bhowany Churn Dutt* and Baboo *Bydonath Dutt* for the appellant.

Baboo *Gurudas Banerjee* and Baboo *Baroda Churn Mitter* for the respondents.

The judgment of the Court (PRINSEP and FIELD, JJ.) was delivered by

FIELD, J.—The appellant in this case obtained, on the 25th May 1880, a decree on a mortgage-bond executed in his favor by Ram Goti Nag. The three sons of Ram Goti Nag were judgment-debtors under that decree, which directed that the mortgage lien should be enforced—*first*, by sale of the property specifically mortgaged; and *secondly*, if the mortgage-debt were not thereby satisfied, by the sale of the other property in the possession of the judgment-debtors. The decree-holder proceeded, in February 1881, to execute this decree against the properties specifically mortgaged; and, after the issue of the sale-notification, it appears that a petition was presented to the Court in which the execution-proceedings were pending by one of the sons of Ram Goti Nag. This petition was presented three days before the date on which the sale was to take place. The purport of the petition was this, that the three sons of Ram Goti Nag were disputing as to the respective shares of their father's property, and they had instituted an administration-suit in order to have the property administered under the directions of the Court, and they asked that the sale of the mortgaged property at the instance of the decree-holder, appellant, should be stayed until the final disposal of the administration-suit. The Subordinate Judge made an order staying the sale; and against that order this appeal has been preferred.

A preliminary objection is first taken that no such appeal will lie. It appears to us, however, that this order, passed

under s. 243 of the present Code, comes clearly within cl. (c) of s. 244, inasmuch as the question raised thereby is a question arising between the parties to the suit in which the decree was passed, and relating to the execution of the decree: It is contended that this question does not really relate to the execution of the decree, and in support of that argument the case of *Gambhirmal and Bana Chand v. Chejmal Jodhmal* (1) has been quoted. Now, in the first place, there is a marked distinction between that case and the present case, in this, that Bana Chand, who was the assignee of the decree for costs, was not a party to the second suit there instituted; and West, J., observed,—“but a strictly literal interpretation of the words we have quoted would exclude Bana Chand from the operation of the section as not having been a party to the suit.” In the next place, we think that the arrangement of the present Code, and the difference between the language of the present Code as compared with the language used in the old Code, must make a material difference in the interpretation, and we entertain no doubt that the order now appealed against, which stays the execution of the decree for an indefinite time, and prevents a secured creditor from availing himself of the benefit of his security, is, according to all common sense, a question relating to the execution of the decree.

Then, as to the merits of the case, we entertain no doubt that the order appealed against ought not to have been made. The decree-holder is a secured creditor. He has obtained a decree upon a mortgage-bond, and that decree entitles him to realize the amount due to him from the property specifically hypothecated by that mortgage-bond. There is no reasonable ground for saying that, because the sons of Ram Goti Nag are disputing as to their shares in the property of their deceased father, a secured creditor is to be debarred from enforcing his security until that quarrel is determined. Under these circumstances, we think that the order of the Subordinate Judge must be set aside, and this appeal decreed with costs.

Appeal allowed.

(1) 11 Bom. H. C. R., 151.

1881.

KRISTO-
MOHINY
DOSSEE

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BAMA CHURN
NAG CHOW-
DRY.