

APPELLATE CIVIL.

Before Mr. Justice Prinsep and Mr. Justice Field.

GOPEE NATH ACHARJE (DEFENDANT) v. AORCHA
BIBEE (PLAINTIFF).*

1881
July 5.

Execution—Attachment by more than one Judgment-creditor of Property of Judgment-debtor in Court—Priority—Civil Procedure Code (Act X of 1877), ss. 272 and 295.

In execution of a decree of a Munsif's Court, the plaintiff attached certain money, the proceeds of decrees which her judgment-debtor had obtained against third parties, then lying in a Small Cause Court to her credit, and subsequently obtained an order from the Munsif directing the same to be paid to her in satisfaction of her decree, which order was duly communicated to the Small Cause Court Judge. Subsequently, the defendant, who held another decree against the same judgment-debtor, attached the same sale-proceeds. The Small Cause Court Judge then proceeded, under s. 272 of the Civil Procedure Code, to enquire whether the plaintiff was entitled to any priority over the second attaching creditor, and having decided that question in the negative, divided the sale-proceeds rateably between them. In a suit brought by the plaintiff, under the above circumstances, to recover from the defendant the portion of the sale-proceeds so paid to him,—

Held, that s. 295 of the Civil Procedure Code had no application, inasmuch as the plaintiff had not applied to the Small Cause Court Judge to execute her decree, and it had never been transferred to that Court for execution; and that the proviso in s. 272 is merely intended to mean that any question of title or priority is to be determined by the Court in which, or in whose custody, the property is, and not by the Court which made the order of attachment.

Held also, that, previous to the order by the Munsif directing the payment to be made to the plaintiff, the Small Cause Court Judge would have had jurisdiction to deal with the question he had tried; but as that order was made prior to the attachment by the defendant, the judgment-debtor had no interest in the money which could be so attached, the effect of that order being to vest the property in the money in the plaintiff, and to take it out of

Appeal from Appellate Decree, No. 798 of 1881, against the decree of Baboo Omirto Loll Chatterjee, Subordinate Judge of Nuddea, dated the 17th February 1881, affirming the decree of Baboo Rajesndro Coomar Bose, Munsif of Ranaghat, dated the 9th September 1879.

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the disposal of the Small Cause Court Judge, and consequently the order for distribution was wrong, and the plaintiff was entitled to the decree she sought.

Quere.—Whether an order made by a Court under s. 272 was intended by the Legislature to be a final order?

IN this case the plaintiff held a money-decree of the Munsif's Court against one Gaida Bibee, and the defendant held a similar decree of the Small Cause Court against the same Gaida Bibee. Gaida Bibee had obtained in the same Small Cause Court other decrees against other persons, and having executed those decrees, she had certain property sold, the proceeds of which were in deposit in the Small Cause Court.

The plaintiff executed her decree of the Munsif's Court and attached the sale-proceeds which were in deposit in the Court of Small Causes upon the execution of Gaida Bibee's decree; and after an order of attachment had been issued in the manner provided by s. 272 of the Code of Civil Procedure, there was a further order made by the Munsif on the 25th January, and communicated by the Munsif to the Small Cause Court Judge, directing the payment of the sale-proceeds to the plaintiff. Subsequent to this, the defendant executed his decree against Gaida Bibee in the Small Cause Court, and attached the same surplus sale-proceeds which had already been attached by the plaintiff, and in respect of which the further order of the 25th January had been procured at the instance of the plaintiff. The Small Cause Court Judge then proceeded under the proviso to s. 272 to enquire whether the plaintiff was entitled to the whole of the surplus sale-proceeds or to a part only; in other words, whether the defendant was entitled to participate therein rateably: and he came to the conclusion that the sale-proceeds ought to be divided between the plaintiff and the defendant; and he divided them accordingly. The plaintiff then brought the present suit in the Munsif's Court to recover from the defendant that portion of the sale-proceeds which had been paid over to him under the order of the Small Cause Court Judge; and contended that the Small Cause Court had no jurisdiction to make the order in question, and that he (the plaintiff) having first attached these surplus sale-proceeds, and

having procured the order of the 25th January for payment of the money over to him, was entitled to the whole of that money. 1881
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Both the lower Courts gave the plaintiff a decree. The defendant appealed to the High Court.

Baboo *Mohil Chunder Bose* for the appellant.

No one appeared for the respondent.

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

PRINSEP, J. (who, after stating the facts as above, continued):—Both the lower Courts have given the plaintiff a decree; and we are of opinion that this decree is correct. We do not concur in much that the Subordinate Judge has said in his judgment on the question of equity; and much of the law quoted by the Subordinate Judge has no application to a case of this kind. It may be proper to observe also that s. 295 of the Code of Civil Procedure has no application to a case of this kind. That section applies only where the decree-holders have all applied to the same Court for execution of their decrees. Now, in this case, the plaintiff did not apply to the Small Cause Court Judge for execution of her decree, seeing that that decree was a decree of the Munsif, and had never been transferred into the Small Cause Court for execution. Then, with reference to s. 272, we think that the Subordinate Judge has taken a proper view of the proviso, which is merely intended to mean that any question of title or priority is to be determined by the Court in which, or in the custody of which, the property is, and not by the Court which made the order of attachment. We think that so long as the order of attachment was in force, and no further order was made, the Small Cause Court Judge would have had jurisdiction to deal with the question of title or priority between the decree-holders; but we think that, after the further order of the 25th January was made, he had no jurisdiction to deal with this question, seeing that the result of that order was to transfer to the plaintiff the amount in deposit; in other words, that the effect of this order

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was to vest in the plaintiff the property in this money and take it out of the disposal of the Small Cause Court Judge. After that order had been carried out, the judgment-debtor, Gaida Bibee, ceased to have any interest in the money which could be attached by the defendant in execution of his decree. Whether an order made by the Court under the proviso of s. 272 was intended by the Legislature to be a final order, is a matter which we do not think it necessary to decide in the present case. It is sufficient for us to say that, under the particular circumstances of this case, the Small Cause Court Judge had no jurisdiction to proceed under the section at the time when he so proceeded. The decision of the lower Appellate Court will be confirmed.

Appeal dismissed.

Before Mr. Justice Prinsep and Mr. Justice Field.

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 July 7.

SREENATH GOOHO AND OTHERS (DECREE-HOLDERS) v. YUSOOF KHAN
 (JUDGMENT-DEBTOR).*

Execution-Proceedings—Limitation—Civil Procedure Code (Act X of 1877), ss. 230, 235, 236, and 237.

In execution of a decree passed more than twelve years before the date of the Civil Procedure Code (Act X of 1877), certain judgment-creditors applied for the attachment and sale of certain specified property belonging to their judgment-debtor, previous to the date on which the three years allowed for such execution, under s. 230, would have expired. Subsequently, after the three years had elapsed, they filed a fresh application, praying that certain other property of their judgment-debtor might be attached and sold in lieu of that specified in their former application, and that the latter might be released.

Held, that execution of the decree was barred by limitation.

Per PRINSEP, J.—Under s. 230 of the Civil Procedure Code, it was intended by the Legislature that a decree-holder, seeking to execute a decree passed more than twelve years before, should have one opportunity to execute that decree, and that if he fails to satisfy it on that application, any further application becomes barred.

* Appeal from Order, No. 197 of 1881, against the order of R. F. Rampini, Esq., Judge of Dacca, dated the 9th April 1881, affirming the order of Baboo K. D. Chatterjee, Munsif of that district, dated the 22nd December 1880.