SANKARAN NARAYANAN v. ANANTHA-NARAYAN-AYYAN.

which was not denied by the lessees, and which was proved beyond all doubt by the lessor. The sons and grandsons of the lessees were improperly made parties in the first instance, and still more improperly, were allowed to change their defence in the course of the suit, and to set up a person who is now shown to have no sort of right, and whose lease-deed is found to be a forgery. The suit is one of 1888. It has occupied the time and attention of three Courts and has been pending for four years. The eleventh defendant has been allowed to obtain a decision as to his title at a cost of eight annas or so, and the stamp revenue has been ruthlessly defrauded. The case ought not to have been converted from a suit of one character into a suit of an entirely different character. The sons and grandsons and their spurious landlord should have been referred to a separate suit for a decision of the question of title. It is nothing less than a scandal that cases should be tried in the manner in which this has been.

Both Courts have found that the lease sued on was granted, that the land is held under it, that second plaintiff under whom first plaintiff holds on Saswathom right is the jenmi, and that the Marupattam on which appellant relies is a recent fabrication. There are no grounds for this second appeal, which is dismissed with costs.

MUTTUSAMI AYYAR, J.—I am also of opinion that upon the facts found, the decision of the Judge is right, and that there are no grounds for interference in second appeal.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Boddam.

1896. November 2, 12.

PARAMANANDA DAS AND ANOTHER (COUNTER-PETITIONERS), APPELLANTS.

v.

MAHABEER DOSSJI (PETITIONER), RESPONDENT.*

Civil Procedure Code—Act XIV of 1882, ss. 244, 257 (a)—Representative of judgment-debtor—Agreement for satisfaction of judgment-debt.

A money decree was passed against a zamindar by the High Court in 1883, and it was transferred to the District Court for execution. The decree-holder

* Appeal against Order No. 33 of 1896.

attached and prepared to bring to sale certain villages of the judgment-debtor. These villages were included in a mortgage subsequently executed by the judgment-debtor in favour of third parties. Both before and after the mortgage the decree-holder received from the zamindar certain sums in consideration of his agreeing to postponements of the sale; also it was agreed between them at a date subsequent to the mortgage that interest should be computed at a higher rate than that provided by the decree. Subsequently the decree-holder sought to bring the land to sale, and in computing the amount then due gave credit for none of the sums so received and calculated interest at the enhanced rate. The mortgagee objected that the computation was erroneous in both these respects and the District Judge upheld his objection. The judgment-debtor took no part in the contest:

Held, (1) that the mortgagee was a representative of the judgment-debtor within the meaning of Civil Procedure Code, section 244, and that an appeal lay against the order of District Judge;

(2) that the District Court not being the Court which passed the decree had no power to sanction the agreements under section 257 (*a*), and the decision was right.

APPEAL against the order of E. J. Sewell, Acting District Judge of North Arcot, passed on Miscellaneous Petition No. 93 of 1894.

This was an application in execution of the decree of the High Court on its original side in Civil Suit No. 194 of 1883 which had been transferred to the District Court of North Arcot for execution.

The decree in question was a money decree passed on 20th September 1883 against the Zamindar of Carvetnagaram and his eldest son; and in execution, the decree-holder obtained a warrant of attachment of certain villages, and a notice of sale was given. The order for sale was made on 8th September 1884. On the 2nd December of the same year the judgment-debtor mortgaged with possession the land in question to the present petitioners, and the sale in execution was repeatedly postponed by arrangement between the decree-holder and the judgment-debtor. Finally the sale was fixed for the 15th February 1894. On the previous day, the present petition was preferred by the mortgagee, who alleged that, in the interval, the decree had been discharged, and he prayed that the attachment be raised, or that the sale should only be made subject to his rights under the mortgage. The petition was put in under Civil Procedure Code, sections 275 and 278. The District Judge held that section 278 was inapplicable for the reason that the petitioner had no interest in the property at the date of attachment which was in April 1884. As to section 275 he expressed the opinion that action should be taken under it only

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before the proclamation of sale was issued; but he decided that the Court should issue a fresh proclamation of sale under section 287 and that, before doing so, it should ascertain the amount remaining due under the decree, on the information available, whether from the mortgagee or from any one else. He accordingly proceeded to make that inquiry. The amount asserted by the decree-holder to be due was arrived at by computing interest on the principal sum at the rate of 12 per cent. in accordance with an agreement made with the judgment-debtor in July 1885 instead of at the rate of 6 per cent. as provided in the decree. Moreover, credit was not given for certain sums paid by the judgment-debtor to procure the consent of the decree-holder to the various adjournments of the sale above referred to. None of these arrangements having, as it was alleged, been sanctioned by the Court, the petitioner contended that all the amounts received in accordance therewith should be credited in discharge of the claim under the decree. As to this the Judge said :—

"The Zamindar (defendant) and the plaintiff put in a joint "application on the 13th July 1885 (Miscellaneous Petition No. "135 of 1885), stating that the defendant had paid Rs. 2,000 "towards the amount due, that Rs. 19,961 remained due, which "defendant undertook to pay to plaintiff before July 29th 1885 "with interest at 12 per cent. per annum and that in default "the attached property should be put up to auction without "fresh sale notice, and the petition asked that the sale should be "adjourned to July 29th. The order on the petition is not signed, "but consists of the word 'ordered' and the date July 15th, "1885. The writing is that of Mr. H. T. Knox, who was then "District Judge, and the office order book bears the same order "with his initials. I am of opinion that this cannot be taken to "be a sanction of an agreement to pay interest at 12 per cent. "instead of the 6 per cent. ordered in the decree. There is not "the smallest mention of the fact that the rate agreed upon is a "different rate to that in the decree, nor was there anything what-"ever to attract the attention of the Judge (Mr. Knox) to the "fact so as to lead him to call for and look at the decree. There is "no request for sanction of the arrangement, nor is any section at "all quoted for the application as required by the Rules of Prac-"tice. The sole request is for an adjournment of the sale to July "29th, the agreement being recited as a reason for the grant of

"the adjournment. It seems to me quite clear that there was no "sanction of the agreement at all. Even if it were held that it "was indirectly approved, the approval only extended up to July "29th, the agreement being only for adjournment until then and "it being expressly stated that no further time is to be given "beyond July 29th. On July 29th, another application was put "in (Miscellaneous Petition 160 of 1885). This time, section 291, "Civil Procedure Code, was quoted, the petition is distinctly "for adjournment of sale and for that only, and no further "reference is made to the rate of interest to be charged. But "thenceforward interest at 1 per cent. is claimed in all the exe-"cution applications. The next question is whether the District "Court of North Arcot could sanction any such agreement. It "is necessary to consider this question in connection with the "sums paid from time to time for postponement. The question "of fact, in connection with them, is not quite so clear. In some "of them, the payment is not alleged to be in consideration of "postponement. Whether it ever was would be a question of "fact on which evidence might have to be taken. But if the "District Court had no power to sanction such payments for "postponement, it is not necessary to inquire whether in fact it did "so or not. Now, the Court which passed the decree was the High "Court; the decree was transferred for execution to the District "Court of North Arcot. The High Court certainly did not "sanction these agreements. Petitioner contends that the District "Court had no power to sanction them. The counter-petitioner "contends that the Court had power under section 228, Civil "Procedure Code. The petitioner contends that the sanction "of the arrangement did, in fact, alter the decree, and that a "decree can only be altered under section 206 or 210, Civil Pro-"cedure Code. The contention is no doubt right, and it seems "to me that to enforce, under the decree, the provisions as to 12 "per cent. interest, instead of the 6 per cent. allowed under the "decree, was not executing, but altering the decree. The case "as to any sums agreed to be paid for adjournment is different. "To recover such sums in execution of the decree would no doubt "be to alter the decree. If that is proposed to be done, I have "no doubt that it is wrong. But the petitioner goes further and "contends that all such sums must be credited in satisfaction of "the decree. It is not contended that they were so paid by

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"the Zamindar, but it is contended that, under the last clause "of section 257 (*a*), they must be so applied, because paid in "contravention of the terms of the section; and they are in con-"travention, because the agreement to pay them was not sanctioned "by the proper Court. Everything turns, therefore, upon the "question whether the phrase 'Court which passed the decree,' "in section 257 (*a*) is to be strictly interpreted and confined to its "literal meaning, or whether section 228 may be held to give such "powers to the Court to which the decree is transferred for "execution."

In conclusion he said:—"I am of opinion that the District "Court had no authority to grant time under section 257 (*a*). It "follows, therefore, that any amounts paid in consideration of "such postponements must, under the second and third clauses of "section 257 (*a*), be applied in satisfaction of the judgment-debt."

The result was that the decree-holder was found to have been overpaid, and it was ordered that no sale proclamation be issued.

The decree-holder preferred this appeal.

The Advocate-General (Hon. Mr. *Spring Branson*) *Ranga Rau* and *Ramanuja Chariar* for appellants.

Bhashyam Ayyangar and *Gopalasami Ayyangar* for respondent.

JUDGMENT.—No doubt in *Jagat Narain* v. *Jag Rup*(1) Oldfield, J., observed that the word representative in section 244, Civil Procedure Code, has no more extended meaning than heir, devisee or executor. But, in *Badri Narain* v. *Jai Kishen Das*(2), Edge, C. J., and Banerji, J., give strong reasons for holding that the term in question has in the context a wider signification. Accordingly when a person purchased mortgaged property from the mortgagor after a decree had been obtained against him by the mortgagee for the enforcement of the latter's right such purchaser was held by the Calcutta and Allahabad Courts to be within the meaning of section 244 (*a*) 'representative' of the mortgagor, defendant (*Gour Sundar Lahiri* v. *HemChunder Choudhury*(3) and *Janki Prasad* v. *Ulfat Ali*(4)).

This being so, it is difficult to distinguish on principle the case of the respondent here from the decisions just cited. For, though, in the present instance, the appellants' decree against the Raja, in

(1) I.L.R., 5 All., 452.
(2) I.L.R., 16 All., 483.
(3) I.L.R., 16 Calc., 855.
(4) I.L.R., 16 All., 284.

execution of which the questions in dispute have arisen, was for money only, yet as at the time the respondent obtained from the Raja the taluk on mortgage, the property had been attached on account of the appellants' decree; the respondent who holds the mortgage which is subject to the said lien, must be held to stand in a position substantially similar to that occupied by the purchasers of the equity of redemption after the mortgage decrees in the Calcutta and Allahabad cases referred to above.

The contention, therefore, that the respondent is not a representative of the judgment-debtor, the Raja, within the meaning of section 244 and the preliminary objection founded thereon that no appeal lies are, in our opinion, unsustainable.

The next question argued is whether the North Arcot District Court had power to sanction agreements of the kind referred to in section 257 (*a*) of the Civil Procedure Code. Clearly it had not, inasmuch as it was not the Court which passed the decree. The words of the section absolutely confine the power to grant the sanction to Courts which pass the decree.

The view taken by the District Judge on this point is right.

The appeal fails and is dismissed with costs.

APPELLATE CRIMINAL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Benson.

QUEEN-EMPRESS

v.

SESHADRI AYYANGAR.*

1896. October 29.

Criminal Procedure Code—Act X of 1882, *s.* 487—*Judicial proceedings.*

A Magistrate, who has refused to set aside an order sanctioning a prosecution on the charge of perjury, has no jurisdiction under Criminal Procedure Code, section 487, to try the case himself.

APPEAL under section 417 of the Code of Criminal Procedure against the judgment of acquittal passed in Criminal Appeal No. 9 of 1896.

* Criminal Appeal No. 370 of 1896.