

*Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Macpherson.*

1884  
December 12.

MOHABIR SINGH AND OTHERS (DECREE-HOLDERS) v. RAM BAGHOWAN CHOWBEY (JUDGMENT-DEBTOR.)\*

*Civil Procedure Code, Act XIV of 1882, ss. 2, 244 (cls. a, b and c)—Appealable Order—Execution of Decree.*

The ancestors of *B* mortgaged their share in a certain mehal to *A*. Subsequently *B* became entitled to this share in the mehal, and *A* obtained a decree on his mortgage, in execution of which the right, title and interest of *B* was sold and purchased by *C*. Subsequently to this latter decree and sale, *B* obtained a decree against *D* for possession of certain lands which were proved to belong to this mehal. *E* then obtained a decree against *B*, in execution of which the right, title and interest of *B* in this same mehal was sold and purchased by *F*; *C* and *F* transferred their rights under their respective purchases to *E*.

*E* thereupon, as purchaser of the right, title and interest of *B* from *F*, applied to execute the decree obtained by *B* against *D*. This application was rejected by the Subordinate Judge, but on appeal to the District Judge was allowed.

*B* thereupon applied to the High Court to have this order set aside.

*Held*, that the order should be set aside, inasmuch as no appeal lay from the order of the Subordinate Judge, the order not being a decree within the meaning of ss. 2 and 244 (cls. *a*, *b* and *c*) of the Civil Procedure Code.

SOME time previous to 1867 the ancestors of Mohabir, Bhootun, and Natha Singh mortgaged a certain mehal named Lotun to one Sookul Chand. On the 27th June 1867 Sookul Chand obtained a decree against the Singhs, in execution of which the right, title and interest of the Singhs in this mehal, which amounted to a six-anna ten-pie share, was sold and purchased on the 7th May 1877 by one Chundy Pershad. In 1877 the Singhs, with certain other persons, their co-sharers, instituted a suit against one Ram Baghowan Chowbey to recover 51 bighas of land which they alleged belonged to mehal Lotun, and on the 16th June 1877 they obtained a decree for possession of 24 bighas thereof. Subsequently to the latter date one Srimondel Doss obtained a decree against the Singhs, in execution

\* Civil Rule No. 1135 of 1884, against the order of J. Tweedie, Esq., Judge of Shahabad, dated the 19th. of May 1884, reversing the order of Baboo Koelash Chunder Mookerji, Subordinate Judge of that district, dated the 8th December 1883.

of which the right, title and interest of the Singhs in the same mehal was again put up for sale, and was, on the 5th July 1880, purchased by one Gopi Lall.

Chundy Pershad and Gopi Lall, the auction-purchasers above mentioned, transferred the interests which they had acquired under the auction sales to Srimondel Doss.

Whereupon Srimondel Doss as purchaser of the right, title and interest of the Singhs from Gopi Lall, applied to execute the decree obtained by the Singhs against Ram Bhagowan Chowbey and dated 16th June 1877, seeking to obtain possession of the 24 bighas covered by the said decree.

The Singhs and Ram Bhagowan Chowbey both put in objections to the application, on the ground that Srimondel Doss, not having purchased the decree, was not entitled to have his name recorded as decree-holder, and was not therefore entitled to ask for execution.

The Subordinate Judge, before whom the application was heard, rejected the application of Srimondel Doss, on the ground that he was neither the original decree-holder nor the purchaser of the decree of the 16th June 1877.

On appeal the District Judge declared Srimondel Doss to be entitled to the right, title and interest of the Singhs in the 24 bighas covered by their decree of the 16th June 1877, on the ground that the auction sale of the 5th August 1880 conveyed to the purchaser Gopi Lall all the right, title and interest, of the Singhs in their share in mehal Lotun, and, that Srimondel Doss had subsequently become the transferee of that interest.

The Singhs thereupon applied to the High Court and obtained a rule against Srimondel Doss and Ram Bhagowan Chowbey calling upon them to show cause why the order of the District Judge should not be reversed on the following grounds:—

(1) That the question adjudicated upon by the Subordinate Judge, not being one between the parties to the original suit or their representatives, the Subordinate Judge had rightly held that Srimondel Doss was not in a position to execute the decree, and from the Subordinate Judge's order no appeal would lie.

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(2) That inasmuch as the decree of the 16th June 1877 was never sold to Srimondel Doss, he had no right to come forward and ask for execution thereof.

(3) That the question between the parties was one which could not be determined in execution proceedings, and that Srimondel Doss should seek any relief he might think himself entitled to by a regular suit.

Baboo *Anund Gopal Palit* in support of the rule.

Baboo *Mohesh Chunder Chowdhry* and Baboo *Srish Chunder Chowdhry* to show cause.

The judgment of the Court was delivered by

GARTH, C.J., (MACPHERSON, J., concurring).—We think that this rule should be made absolute.

The question which the Judge has decided in the Court below was not the proper subject of an appeal, unless it was “*a decree*” within the meaning of s. 2 of the Code of Civil Procedure. And it would not be “*a decree*” within the meaning of that section unless it came under sub-section (a) or (b) or (c) of s. 244.

The appellant in the Court below, Srimondel Doss, contends here that it does come within sub-section (c), because it is “a question arising between the parties to the suit in which the decree was passed, or their representatives.” He argues that the party who applies to execute the decree is “a representative of the plaintiff in the suit.”

We think however that the question is not one which can properly be said to have arisen between the parties to the suit. It is not a question between the plaintiff and the defendant, or between the representatives of either the plaintiff and the defendant; but it has arisen between the plaintiff in this suit and a person who, under a sale which took place in another suit, has professed to buy the plaintiff's interest in this suit.

He is a person therefore who claims the plaintiff's interest in this suit adversely to the plaintiff himself, and who is trying to avail himself of the decree, which the plaintiff has obtained in this suit.

The question therefore is not one between the plaintiff and the defendant, nor in any sense one between the parties to the suit:

it is a question between the plaintiff and a stranger to the suit. 1884

That being so, we think that no appeal lay to the District Judge. The rule will therefore be made absolute; the decree of the District Judge will be reversed, and that of the Subordinate Judge restored with costs.

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*Rule absolute.*

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RUGHUNATH PANJAH AND OTHERS (PLAINTIFFS) v. ISSUR CHUNDER  
CHOWDHRY AND OTHERS (DEFENDANTS).<sup>o</sup>

1884  
December 22.

*Res-Judicata—Act XIV of 1882, s. 13—Meaning of the words " Court of jurisdiction competent to try such subsequent suit."*

The words of s. 13 of the Civil Procedure Code, "in a Court of jurisdiction competent to try such subsequent suit," refer to the jurisdiction of the Court at the time when the first suit was brought.

Where therefore a suit was brought and decided in 1867 in the Court of a Deputy Collector, that Court being at the time of suit the only Court competent to try suits of the nature of the one brought, and subsequently a second suit, regarding the same subject and between some of the same parties and the representatives of others, was brought in 1881 in the Court of a Munsiff, which latter suit, if it had been brought in 1867, would have been cognizable by a Deputy Collector alone, *Held*, that the decision of the Deputy Collector was a bar to the second suit under s. 13 of the Civil Procedure Code.

The principle in *Gopinath Chobey v. Bhaghwat Pershad* (1) approved.

THIS was a suit to have it declared that the plaintiffs were entitled to recover rent from the defendants at the rate of Rs. 92 per annum for 53 bighas of land held under a *potta* dated 21st Bysack 1266, and for khas possession of 2 bighas 6 cottahs in excess of the lands mentioned in the *potta*.

It appeared that one Gunga Gobind Sinha was the dur-putnai taluqdar of 53 bighas of land in mouzah Higuldiha, and that he

<sup>o</sup> Appeal from Appellate Decree No. 1791 of 1883, against the decree of Babu Badha Kristo Sen, Subordinate Judge of Bancoorah, dated the 3rd of April 1883, modifying the decree of Babu Ananda Nath Mozoomdar, Munsiff of Kotulpore, dated 19th of September 1881.

(1) I. L. R., 10 Cal., 697.