

1884  
December 18.

*Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Macpherson,*  
GOSSAIN MONEY PUREE (DECREE-HOLDER, PETITIONER) v. GURU  
PERSHAD SINGH AND OTHERS (OPPOSITE PARTIES).\*

*Injunction in one suit pending appeal in another suit—Interim injunction—Civil Procedure Code, Act XIV of 1882, s. 546.*

A brought a suit and obtained a decree against B on a mortgage bond in the Court of a Subordinate Judge, which decree was confirmed by the High Court on appeal. A then applied for execution. In the execution proceedings the sons of B intervened claiming a portion of the properties attached; this claim was dismissed, and the sons of B brought a regular suit before the same Subordinate Judge to have their rights to the property declared, and obtained an *interim* injunction restraining A from executing his decree pending the decision of their suit. This suit was dismissed, and the sons of B appealed to the High Court. A again applied for execution of his mortgage decree, whereupon the sons of B applied for a further injunction restraining A from executing his decree pending their appeal to the High Court, this application was granted. *Held*, that the Subordinate Judge had no right to restrain the decree-holder from executing his decree, merely on the possibility of the Appellate Court reversing his decision.

THIS was a rule obtained under s. 622 of the Code of Civil Procedure.

It appeared that one Gossain Money Puree, on the 30th August 1880, obtained a decree on a mortgage bond against one Chukka Sing, the father of a Mitakshara family, in the Court of the Additional Subordinate Judge of Gya, which decree was affirmed by the High Court on the 8th May 1882. The decree-holder applied for execution of this decree, but the judgment-debtor applied for a month's postponement, which was granted. On the 14th September 1882 the judgment-debtor applied for further time, but this was refused him. On the 16th December 1882 the sons of the judgment-debtor intervened in the execution proceedings under s. 278, and objected to the attachment of the mortgaged properties on the ground that they were entitled to certain parts of the property directed to be sold; this application was however, disallowed. The sons of Chukka Sing thereupon, on

\* Civil Rule No. 999 of 1884, against an order made by Baboo Kali Prosunno Mookerjee, Additional Subordinate Judge of Gya, dated the 14th of May 1884.

the 18th December 1882, brought a regular suit in the Court of the Additional Subordinate Judge of Gya against Chucka Sing and Gossain Money Puree to establish their right to the attached properties, and on the same date they applied that execution of the decree of the 8th May 1882 might be stayed ; this application was dismissed. A similar application was then made to the High Court, which was on the 23rd January 1883 also rejected, the Court stating in its order " that should it appear fair and proper to the Court trying the regular suit, a temporary injunction might be granted by that Court under s. 402 of the Code of Civil Procedure."

1884  
 GOSSAIN  
 MONEY  
 PUREE  
 v.  
 GOUR  
 PERSHAD  
 SINGH.

In accordance with this order the Additional Subordinate Judge, on the 9th February 1883, granted an *interim* injunction postponing the sale of the mortgaged properties in execution of the High Court decree until the final disposal of the regular suit.

On the 20th December 1883 the suit brought by the sons of Chucka Sing was dismissed. Against this decree they appealed to the High Court, and that appeal at the time of the application to the High Court hereinafter mentioned was then pending.

On the 30th January 1884 Gossain Money Puree applied for the sale of the properties attached under his decree of the 8th May 1882, and the usual sale proclamation was issued. But on the 9th May 1884 the sons of Chucka Sing applied in the Additional Subordinate Judge's Court for a further injunction staying the sale pending the appeal in the suit of the sons of Chucka Sing.

The Additional Subordinate Judge on the 14th May 1884 directed that the sale should be stayed until the final decision of the appeal ; the order was not made on notice to Gossain Money Puree, nor was security taken from the sons of Chucka Sing.

Gossain Money Puree thereupon applied to the High Court under s. 622 of the Civil Procedure Code and obtained a rule calling upon the sons of Chucka Sing to show cause why the order of the Additional Subordinate Judge of Gya, dated the 14th May 1884, should not be set aside, on, amongst others, the following ground ;—that the Additional Subordinate Judge had no jurisdiction to issue an injunction for the purpose of staying the execution proceedings pending the appeal to the High Court, inasmuch as

1884  
 GOSSAIN  
 MONEY  
 PURCE  
 v.  
 GOUR  
 PERSHAD  
 SINGH,

he had decided the claim case against the sons of Chucka Sing, and had nothing to do with appeal to the High Court.

Baboo *Karuna Sindhu Mukerjee* showed cause against the rule.

Baboo *Kaloda Kinkar Rai* in support of the rule.

The order of the Court was delivered by

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

It was applied for under these circumstances: One Gossain Money Purce had obtained a decree against one Chucka Sing in the Gya Court, dated the 30th August 1880, by which the sale of certain property, which had been mortgaged to him by Chucka Sing, was ordered to be made. That decree had been confirmed by the High Court.

Chucka was the father of a Mitakshara family; and after this decree had been obtained his sons brought another suit to have it declared that they were entitled to certain shares in the property which had been ordered to be sold, and which Chucka Sing had no right to mortgage.

Meanwhile the mortgagee, the plaintiff in the first suit, proceeded to execute his decree; but the plaintiffs in the second suit (the sons) applied for and obtained an *interim* injunction from the Subordinate Judge against the plaintiff in the first suit, restraining him from selling the property until the second suit should have been heard and decided.

On the 20th of December 1883 that suit came on to be heard, and was decided against the plaintiffs (the sons of Chucka Sing); whereupon, on the 30th of January 1884, the plaintiff in the first suit (the mortgagee) applied for execution against the mortgaged property, and the usual sale proclamation was issued.

The plaintiffs in the second suit, however, who had appealed from the decree which had been made against them, applied for and obtained from the Subordinate Judge, on the 14th of May 1884, a further injunction, restraining the plaintiff in the first suit from executing his decree until the appeal in the second suit should have been heard.

This rule was then obtained upon the ground (amongst others) that the Subordinate Judge had no right, under the circumstances,

to grant the injunction, inasmuch as he had decided against the claim of the plaintiffs in the second suit, and had nothing to do with the appeal to this Court.

It has now been contended on behalf of the plaintiffs, that by analogy to s. 546 of the Code of Civil Procedure, the Subordinate Judge, if he considered it right and equitable, had jurisdiction to stay execution in the other suit, until the appeal to this Court had been heard.

We think, however, that s. 546 has nothing to do with the question before us. That section only relates to *staying proceedings in execution by the Court which passed the decree in which the proceedings are pending*. That Court has a right, under certain circumstances and subject to certain conditions, to stay the execution of its own decrees while those decrees are under appeal.

But here the lower Court has taken upon itself in this suit to stay the execution of a decree, which has been pronounced by the High Court in another suit.

The Subordinate Judge had in point of law no power to deal with the proceedings in that other suit at all. He had a right, whilst the questions in this suit were awaiting trial, to restrain the defendants by an *interim* injunction from enforcing his decree in the former suit. That he might do *by an order upon the defendants personally*. But as soon as those questions were decided against the plaintiffs, the Subordinate Judge had no right, we think, to restrain the defendant further, upon the mere possibility of the Appellate Court reversing his decree; and it is clear that he had no right to do so under the section of the Code upon which he appears to have acted.

If any Court has a right to grant an injunction now, we presume it would be the Court of appeal. But it is no part of our present duty to decide whether any Court has such a power or still less that, having the power, it ought to exercise it.

All that we now say is, that the Court below, having made a decree against the plaintiffs, had no right, in aid of the plaintiffs, to restrain the defendant from proceeding in the other suit.

The rule must be made absolute with costs.

*Rule absolute.*

1884

GOSAIN  
MONEY  
PUREN  
v.  
GOUR  
PERNHAD  
SINGH.