

1877

RAJA BARDA  
KANT RAI  
v.  
BHAGWAN  
DAS.

consider that the Judge is right in disallowing respondents credit for expenses incurred in improvements of the property; they appear to have been unnecessary and not sanctioned by the terms of the mortgage.

We affirm the decree of the lower appellate court, and dismiss the appeal, but each party will pay their own costs of this appeal.

1877  
January 30.

## APPELLATE CIVIL.

*Before Sir Robert Stuart, Kt., Chief Justice, and Mr Justice Oldfield.*

MUSAMMAT BHAWANI KUAR AND OTHERS (JUDGMENT-DEBTORS) v.  
GULAB RAI AND OTHERS (DEGREE-HOLDERS).\*

*Act VIII of 1859, ss. 236, 252—Decree charging land—Immoveable property—  
Sale of judgment creditor's right in immoveable property.*

The sale of a decree charging land for its satisfaction in the course of execution—proceedings against judgment-creditor, is a sale of an interest in immoveable property. *Held*, that the provisions of the Code of Civil Procedure relating to sales of immoveable property will apply to such sale.

In the course of execution-proceedings by Gulab Rai, and another against Musammat Bhawani Kuar and another, the decree-holders attached and brought to sale a decree, dated 23rd August, 1875, held by the judgment-debtors against Madho Singh and others in which certain land stood charged as liable to sale. The said sale was effected through the court of the Subordinate Judge of Aligarh as though the decree, notwithstanding that it charged immoveable property, was itself moveable property. On application by Musammat Bhawani Kuar and another, judgment-debtors, to set aside the sale as invalid on the ground of its having been effected as a sale of moveable property, and no sale notification of the property as immoveable property having been promulgated or affixed, in consequence of which irregularities property worth Rs. 1,869 was sold for only Rs. 1,000, the Subordinate Judge held that the sale of the decree was of moveable property, and that under section 252, Act VIII of 1859, the said sale could not be set aside. The Judge on appeal by the judgment-debtors was of opinion that inasmuch as only *the*

\* Miscellaneous Special Appeal, No. 71 of 1876, from an order of H. M. Chase, Esq., Judge of Aligarh, dated the 2nd August, 1876, affirming an order of Maulvi Sami-ul-lah Khan, Subordinate Judge of Aligarh, dated the 20th May, 1876.

rights in the decree had been sold, the Subordinate Judge was right in holding the sale to have been one of moveable property and dismissed the appeal.

In special appeal to the High Court the judgment-debtors contended that the sale of a decree charging immoveable property should be governed by the law applicable to sales of immoveable property.

*Lala Lalta Parshad* and *Pandit Ajudhia Nath*, for appellants.

*Pandit Bishambhar Nath*, and *Pandit Nand Lal*, for respondents.

The High Court ruled the point in the following judgment remanding the case to the Judge for decision on the merits :—

A preliminary objection is taken by the pleader for the respondents under s. 252 of the Procedure Code which provides “no irregularity in the sale of moveable property under an execution shall vitiate the sale, but any person who may sustain any injury by reason of such irregularity may recover damages by a suit in court.” But this assumes that the subject of sale here is moveable property and that the judgments of the lower Courts are right in that respect. We are, however, clearly of opinion that the right which is the subject of sale under the decree is legally of the nature of immoveable property, and that section 252 does not therefore apply. As against the appellants the decree is for Rs. 1,593-3-0 together with Rs. 194-10-6, amount of costs, and it orders absolutely that the money shall be recoverable from 5 biswas, 11 biswansis, and 2½ kachwansis.

The decree is, therefore, absolutely for money recoverable by sale of immoveable property hypothecated for its payment. The right and interest which it creates is a right in a judgment debt recoverable by sale of immoveable property charged with its payment. The decree thus conveyed to the decree-holders a subsisting interest in the nature of a charge on the hypothecated property, and the sale of their rights under the decree must be held to be a sale of such an interest in immoveable property to which the provisions of the Code for sales of immoveable property will apply.

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MUSAMMAT  
BHAWANI  
KUMAR

v.  
GULAB RAY.

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MUSAMMAT  
BHAWANI  
KUAR,  
v.  
GULAB RAI.

We reverse the order of the Judge and remand the case to him for decision on the merits, he has erred in considering the sale in this case to be a sale of moveable property.

### APPELLATE CIVIL.

*Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Spankie.*

1877

January 31.

STOWELL, MANAGER, UNCOVENANTED SERVICE BANK, LIMITED, (DECREE-HOLDER)  
v. BILLINGS. (JUDGMENT-DEBTOR.)\*

*Act VIII of 1859, ss. 285—348—Act XIV of 1859—Act IX of 1871—Compromise under decree—Execution—Limitation—Payments under Compromise—Proceedings under barred decree.*

Where a decree-holder entered into a compromise with the judgment-debtor, agreeing to accept payment by instalments, which was ratified by the Court executing the decree, the case being struck off, the execution file on the basis of the compromise, and more than three years after the date of the Court's order sanctioning the compromise subsequent proceedings were taken by the decree-holder to enforce the original decree. *Held* that such subsequent proceedings when execution of the original decree had been already barred by limitation could not avail to keep the decree alive.

THE execution proceedings in this case arose out of a decree passed by the High Court on the 5th January, 1869, against the judgment-debtor for Rs. 7,879-14-5, bearing interest at six per cent. per annum.

The Uncovenanted Service Bank, decree-holder, entered into a private arrangement with the judgment-debtor to accept payment in monthly instalments bearing interest at twelve per cent. per annum. A petition was presented by the judgment-debtor on the 23rd August, 1869, to the Court of the District Judge, executing the decree. This petition notified the terms of the compromise, which acknowledged the decree-holder's right to revert to execution of the original decree with interest at the additional rate in the event of failure of any two consecutive monthly instalments. The Court, on the 7th September, 1869, ratified the said compromise and struck off the case from the execution file.

On the 15th February, 1873, the decree-holder applied for a certificate under s. 285, Act VIII of 1859, to enable him to execute the decree of 5th January, 1869, out of the Court's jurisdiction where the judgment-debtor resided. After notice to the judgment-

\* Miscellaneous Regular Appeal, No. 48 of 1876, against an order of H. G. Keene, Esq., Judge of Agra, dated the 22nd April, 1876.