

1880  
 IVA SINGH  
 v.  
 M. MANO-  
 HAR.

15th July, 1879, where the question was whether certain family property could be held liable under decrees obtained against members of the joint family, their Lordships appear to consider that, where the family is joint, there may be a presumption that the party sued is sued as a representative of the family, and they held that, when the decrees are substantially decrees in respect of a joint family and against the representatives of the family, they may be properly executed against the joint family property. Such appears to be the case in the suit in which this appeal has been made. Much stress has been laid by the plaintiff-appellant's counsel on the case of *Deendyal Lall v. Jugdeep Narain Singh* (1). In that case it was held that the auction-purchaser, who was also the decree-holder, "could not acquire more than the right, title, and interest of the judgment-debtor; and if he had sought to go further, and to enforce his debt against the whole property, and the co-sharers who were not parties to the bond, he ought to have framed his suit accordingly, and have made those co-sharers parties to it; by the proceedings which he took he could not get more than that was seized and sold in execution, viz., the right, title, and interest of the father."

But our view of the case before us, which proceeds on the representative character of the judgment-debtor as representing the family, cannot be said to be in conflict with the principle laid down in the above case.

We affirm the decree of the lower appellate Court and dismiss this appeal with costs.

*Appeal dismissed.*

*Before Mr. Justice Pearson and Mr. Justice Oulfield.*

1880  
 February 24.

SHANKAR DIAL (DECREE-HOLDER) v. AMIR HAIDAR AND OTHERS (JUDGMENT-DEBTORS.)\*

*Objection to attachment of attached property by judgment-debtor—Order against decree-holder—Decree-holder's remedy—Appeal—Suit to establish right—Act X of 1877 (Civil Procedure Code), ss. 278, 279, 280, 281, 282, 283.*

An objection was made to the attachment of certain property in the execution of a decree, by the judgment-debtor, on the ground that such property was

(1) I. L. L., 3 Calc., 198.

\* First Appeal, No. 145 of 1879, from an order of Maulvi Abdul Majid Khan, Subordinate Judge of Ghazipur, dated the 18th July, 1879.

in his possession, not as his own property, but on account of an endowment. This objection was one of the nature to be dealt with under s. 278 and following sections of Act X of 1877. The Court executing the decree made an order against the decree-holder releasing the property from attachment. Held that such order was not appealable, the fact that the objection was made by the judgment-debtor notwithstanding, and the decree-holder's proper remedy was to institute a suit, under the provisions of s. 283 of Act X of 1877.

1880

---

SHANKAR  
DIAL  
v.  
AMIR HA  
DAR.

The facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Munshis *Hunuman Prasad* and *Sukh Ram*, for the appellant.

The *Senior Government Pleader* (*Lala Jwala Prasad*) and *Shah Asad Ali*, for the respondents.

The judgment of the High Court (PEARSON, J. and OLD-FIELD, J.) was delivered by

OLDFIELD, J.—The decree-holder, appellant before us, sought to attach certain property in execution of his decree, and the judgment-debtors objected that they held the property, not as their own property, but as superintendents of an endowment to which the property belonged, and they objected to the attachment. The Court of first instance released the property from attachment on the objections taken. The decree-holder appealed to the Judge, who dismissed the appeal on the ground that, with reference to the value of the subject-matter, it lay to the High Court. The decree-holder has now appealed to this Court. A preliminary objection appears to us to be valid, to the effect that there is no appeal, and that the decree-holder's proper remedy is by regular suit.

The objections taken to the attachment were of the nature of those to be dealt with under s. 278 and following sections, Civil Procedure Code, and the remedy for the party dissatisfied is under s. 283 by regular suit. The case is not altered by the circumstance that the objectors were the judgment-debtors. It has been held frequently that the provisions of s. 278 and following sections apply equally to the objections by parties to the suit as by strangers, when their objections are of the nature of those with which those sections deal.—*Haris Chandra Gupto v. Srimati Shashi Mala*

1880

SHANKAR  
DIAL  
v.  
MIR HAI-  
DAR.

*Gupti* (1): *In the matter of the petition of J. B. Rainey* (2): *Chunder Kant Surmah v. Bungshee Deh Surmah* (3). We dismiss the appeal with costs.

*Appeal dismissed.*

1880  
February 24.

*Before Mr. Justice Pearson and Mr. Justice Oldfield.*

BALDEO PRASAD AND ANOTHER (PLAINTIFFS) v. GRISH CHANDAR BHOSE  
(DEFENDANT) \*

*Suit on lost Cheque—Perties to Suit—Act X of 1877 (Civil Procedure Code), s. 61.*

The indorsees of a cheque sued the indorser, stating in their plaint that the cheque had been lost and that the defendant refused to give them a duplicate of it, and claiming a duplicate of it or the refund of the money they had paid the defendant on the cheque.

*Held* that the plaint disclosed a cause of action against the defendant. *Held* also that the plaint should be amended by joining the drawer of the cheque as a defendant in the suit.

The facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Munshi *Hanuman Prasad* and Lala *Lalta Prasad*, for the appellants.

The *Junior Government Pleader* (*Babu Dwarka Nath Banarji*) and *Babus Oprokash Chandar Mukarji* and *Baroda Prasad Ghose*, for the respondent.

The judgment of the High Court (PEARSON, J. and OLDFIELD, J.) was delivered by

OLDFIELD, J.—The case of the plaintiffs is that a cheque No. 3821 of 18th October, 1877, drawn by Captain C. Ellis, Emigration Agent, on the Bank of Bengal, for Rs. 300, was endorsed over to their agent, Parsotam Das, by the defendant, for valuable consideration. Parsotam Das sent the cheque to the plaintiffs' firm at

(1) 6 B. L. R., 721

(2) 6 W. R., 61.

(2) 6 B. L. R., 725.

\* First Appeal, No. 130 of 1879, from a decree of H. D. Willock, Esq., Judge of Azamgarh, dated the 4th April, 1879.