

1879

HADHO DAS
v.
RUKMAN
EVAK SINGH.

The lower Court was not therefore warranted in granting the application and reviewing its former judgment of 23rd August, 1873. We accordingly allow the objection taken here on behalf of the minor respondent, and dismiss the appeal with costs, and set aside the judgment and decree dated the 29th November, 1876.

1879

April 17.

CIVIL JURISDICTION.

Before Mr. Justice Pearson and Mr. Justice Olffield.

SULTAN KUAR (JUDGMENT-DEBTOR) v. GULZARI LAL (DECREE-HOLDER).*

Execution of Decree—Sale of a Money-decree—Act X of 1877 (Civil Procedure Code), ss. 166, 273.

Held that Act X of 1877 does not contemplate the sale of a decree for money as the result of its attachment in the execution of a decree, and the attachment of a decree for money in the mode ordained in s. 273 cannot lead to its sale.

Held also that the last clause but one of s. 273 applies to other than money-decrees.

Where two decrees for money, although they were not passed by the same Court, were being executed by the same Court, *held* that the provisions of the first clause of s. 273 of Act X of 1877 were applicable on principle.

THIS was a reference to the High Court, under s. 617 of Act X of 1877, by Mr. R. F. Saunders, District Judge of Farukhabad. One Sultan Kuar, on the 8th August, 1878, obtained a decree against one Lahro Bai and certain other persons for Rs. 500, in the execution of which she caused certain immoveable property to be attached as the property of the judgment-debtors. One Gulzari Lal objected to the attachment of this property, claiming it as his own, and on the 14th September, 1878, the Court to which the decree had been sent for execution ordered that the attachment should be removed, and that Sultan Kuar should pay the costs of the objection, which amounted to Rs. 25 or thereabouts. Gulzari Lal, in order to enforce payment of this amount, caused Sultan Kuar's decree to be attached in the execution of the order dated the 14th September, 1878. Sultan Kuar objected to the sale of her decree on the ground that Act X of 1877 did not contemplate the sale of a decree for money. The Court of first instance disallowed the objection and directed that the decree should be sold. Sultan Kuar

* Reference, No. 1 of 1879, by R. F. Saunders, Esq., Judge of Farukhabad.

appealed to the District Judge against the order disallowing her objection, who referred to the High Court the question whether or not Sultan Kuar's decree was saleable in the execution of the order dated the 14th September, 1878.

The parties were not represented.

The judgment of the Court was delivered by

PEARSON, J.—Although debts are mentioned in the category of property liable to attachment and sale in execution of a decree in s. 166 of Act X of 1877, yet it is apparent from the provisions of s. 273 of the Act that the sale of a money-decree is not contemplated as the result of its attachment, and that an attachment in the mode therein ordained cannot lead to a sale.

In our opinion the Judge is wrong in holding the last clause but one of s. 273 to be applicable in the present case. That clause applies to other than money-decrees. Although the two decrees held by Gulzari Lal and Sultan Kuar respectively were not passed by the same Court, nevertheless as they are being executed by the same Court, the provisions of the first clause of the section are applicable on principle.

Our opinion may be communicated to the Judge in reply to his reference.

APPELLATE CIVIL.

Before Mr. Justice Pearson and Mr. Justice Spankie.

KANCHAN SINGH AND OTHERS (JUDGMENT-DEBTORS) v. SHEO PRASAD
(DECREE-HOLDER).*

Execution of decree—Decree for money payable by Instalments—Adjustment of Decree—Act VIII of 1859 (Civil Procedure Code), s. 206—Act IX of 1871 (Limitation Act), sch. ii, art. 167.

A decree for the payment of money by instalments directed that, if the judgment-debtor failed to pay two instalments in succession, the decree-holder should be entitled to enforce payment of the whole amount due under the decree. The decree-holder, alleging that a portion of the ninth instalment was payable and that the whole of the tenth (the last) instalment was due, applied to enforce payment of the moneys due under the decree.

* Second Appeal, No. 111, of 1878, from an order of G. L. Lang, Esq., Officiating Judge of Aligarh, dated the 28th May, 1878, reversing an order of Maulvi Farid-ud-din Ahmad, Subordinate Judge of Aligarh, dated the 14th December, 1877.

1879

SULTAN KUAR
v
GULZARI
LAL.

1879

April 28th