

1879

HIKKA MAL
v.
GARDNER.

be met by a corresponding enhancement of rents. In the former suit to which reference has been made it was held that enhancement of rents by the mortgagees would not debar them from recovering enhanced *jama*; and the ruling was not impugned by appeal. The ground on which the suit has been disallowed by the lower Courts failing, it does not appear that there is any substantial defence to the suit, or that in reference to the foregoing remarks it is necessary to remand the case for the trial of the other issues laid down for trial by the Court of first instance.

We decree the appeal and claim with costs in all the Courts, and interest at 6 per cent. per annum from the date of this decree to the date of realisation.

Appeal allowed.

1879

March 20.

Before Mr. Justice Pearson and Mr. Justice Spinkie.

THE COLLECTOR OF MORADABAD (DEFENDANT) v. MUHAMMAD DAIM KHAN (PLAINTIFF).*

Act VIII of 1859 (Civil Procedure Code), s. 309—Pauper Suit—Sale in Execution of Decree—Distribution of Sale-Proceeds—Court-Fees—Prerogative of the Crown.

With a view to recover the amount of Court-fees which *J* would have had to pay had he not been permitted to bring a suit as a pauper, the Government caused certain property belonging to *B*, the defendant in such suit, who had been ordered by the decree in such suit to pay such amount, to be attached. This property was subsequently attached by the holder of a decree against *B* which declared a lien on the property created by a bond. The property was sold in the execution of this decree. *Held* that the Government was entitled to be paid first out of the proceeds of such sale the amount of the Court-fees *J* would have had to pay had he not been allowed to sue as a pauper, the principle that the Government takes precedence of all other creditors not being liable to an exception in the case of lien-holders. The decision in *Ganpat Putaja v. The Collector of Kanara* (1) applied in this case.

THE facts of this case were as follows: One Jagan Nath brought a suit as a pauper against Bulaki Das in the Moradabad district, in which suit a decree was made against Bulaki Das directing that he should pay the costs of such suit. The Collector

* Second Appeal, No. 1060 of 1878, from a decree of Maulvi Muhammad Sami-ul-Ja Khan, Subordinate Judge of Moradabad, dated the 4th June, 1878, reversing a decree of Maulvi Ain-ud-din, Munsif of Moradabad, dated the 19th November, 1877.

(1) L. L. R., 1 Bom. 7.

of Moradabad subsequently applied for the attachment of a house belonging to Bulaki Das, with a view to recover by its sale the amount of Court-fees which Jagan Nath would have had to pay had he not been permitted to sue as a pauper. The house was accordingly attached on the 8th January, 1875. The house was again attached on the 30th June, 1876, in the execution of a decree obtained by Muhammad Daim Khan against Bulaki Das on a bond for the payment of money, in which the house was charged with such payment, such decree directing that the house should be sold in satisfaction of the decree. The house was sold in the execution of this decree, and the Collector was first paid out of the sale-proceeds, and the surplus remaining was paid to Muhammad Daim Khan, who now sued the Collector to recover the amount paid to him. The Court of first instance held that the Government was entitled to be paid first out of the sale-proceeds, and dismissed the suit. On appeal by the plaintiff the lower appellate Court gave him a decree, distinguishing the present case from *Ganpat Putaya v. The Collector of Kanara* (1), on the ground that in the present case the plaintiff had a lien on the property.

1879
 COLLECTOR
 OF
 MORADABA
 D.
 MUHAMMAD
 DAIM KHAN

The defendant appealed to the High Court, contending that the Government took precedence of creditors of every description.

The *Senior Government Pleader* (Lala Juala Prasad), for the appellant.

Shah Asad Ali, for the respondent.

The judgment of the Court was delivered by

PEARSON, J.—In our opinion the ground of appeal is valid and must be allowed. The Bombay High Court's decision in the case of *Ganpat Putaya v. The Collector of Kanara* (1) appears to be applicable in the present case. The principle that the Government takes precedence of all other creditors is not liable to an exception in the case of lien-holders. We decree the appeal with costs, and, reversing the lower appellate Court's decree, restore that of the Court of first instance.

Appeal allowed.

(1) I. L. R., 1 Bom. 7.