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might have put up the property to sale once for all in execution of both decrees, and have left the Court executing the decrees to determine the rights of the respective decree-holders to the purchase-money realised by the sale, but we cannot go so far as to say he was bound to put up the property once for all for sale in execution of the decrees. There being separate orders for sale, the decree-holders might have called upon him to execute them separately, each desiring to dispute the right of the other. There was certainly no irregularity in the conduct of the sale in execution of the decree of Thakur Dayal; and if that sale had been set aside for any irregularity or otherwise, it does not appear that any irregularity would have been proved to vitiate the sale in execution of the decree of Gaya Prasad and Ram Manorath, and this being so the purchaser at the second sale could not have maintained an objection to either sale on any of the grounds mentioned in s. 256 of Act VIII of 1859. His objection was in fact of a different nature. His objection to the sale in execution of Thakur Dayal's decree having been overruled, he resisted the order confirming the second sale on the ground that the Court was incompetent to confirm a sale which had by its previous order been nullified. The provisions of s. 257 apply to applications made under s. 256 and to those only, and consequently the appellant is not in our judgment precluded by the terms of that section from maintaining this suit. We therefore reverse the decree of the lower appellate Court, and restore that of the Court of first instance with costs.

Appeal allowed.

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Before Mr. Justice Turner and Mr. Justice Oldfield.

BHICHUK SINGH AND OTHERS (JUDGMENT-DEBTORS) v. NAGESHAR NATH
 AND OTHERS (DECREE-HOLDERS).*

Special Appeal—Suit of the nature cognizable in a Small Cause Court—Act XXIII of 1861, s. 27—Act XLIII of 1860, s. 1.

Held, where a suit of the nature cognizable in a Court of Small Causes was instituted before Act XLIII of 1860 came into force, and an order was made on regular appeal in execution of the decree in such suit after the passing of Act XXIII of 1861, that the provisions of s. 27 of Act XXIII of 1861 applied, and accordingly no special appeal would lie from such order(1).

* Application, No. 4 of 1878, for a review of the judgment in Appeal from orders, No 13 of 1878, dated the 25th June, 1878.

(1) See also *Gora Chand Misser v. Raja Baykanto Narain Singh*, 12 B. L. R. 261.

THE facts of this case were as follows : On the 22nd December, 1876, the holders of a decree for money dated the 9th May, 1843, which had been made in a suit of the nature cognizable in Courts of Small Causes, applied for the execution of such decree. On the 13th April, 1877, the Court of first instance refused this application, on the ground that the execution of the decree was barred by limitation. On the 24th December, 1877, the order of the Court of first instance was affirmed by the lower appellate Court on appeal by the decree-holders. On the 25th June, 1878, the decree-holders having appealed to the High Court from the order of the lower appellate Court, the High Court (TURNER, J., and OLDFIELD, J.) set aside the orders of the lower Courts, and remanded the case to the Court of first instance for proper orders.

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The judgment-debtors now applied to the High Court for a review of its judgment dated the 25th June, 1878, on the ground that no second appeal would lie to it from the order of the lower appellate Court, such order having been made in a suit of the nature cognizable in Courts of Small Causes.

Lala Lalta Prasad, for the judgment-debtors, respondents.

The Senior Government Pleader (Lala Juala Prasad), for the decree-holders, appellants.

The High Court (TURNER, J., and OLDFIELD, J.) delivered the following judgments :

TURNER, J. — I cannot say that, if the point raised in this case had come before the Court in the absence of authority, I should not have been disposed to hold that the language of s. 27 of Act XXIII of 1861 prohibited a special appeal in suits of the nature triable by Courts of Small Causes instituted prior to the passing of Act XLIII of 1860. It appears to me that, on a strict construction of the terms of s. 1 of that Act and of the analogous provisions of s. 27 of Act XXIII of 1861, it would be held that the language of the Acts was prospective and applied to suits which should be thereafter instituted rather than to suits which had been already instituted and determined (1). But seeing that it has been ruled by

(1) So held in *Bholanath Dutt v. Mokadeb Sheet*, 3 W. R. Mis. 19.

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a Full Bench of the High Court of Calcutta (1) that the terms on which the appellant relies are merely words of description and do not relate to the time of institution, for such I take it is the effect of the decision, and seeing also that the cases must be few in which the point can arise, for all doubt is removed by the language of the amended Code, I do not consider myself justified in unsettling the law as it has been settled by that decision, and consequently agree that this Court had not jurisdiction to hear the appeal, that the review of judgment must be allowed, and the appeal dismissed, but as the point was not taken at the hearing of the appeal, I would order that each party should bear his own costs in this Court.

OLDFIELD, J.—The decree which was in execution in this case is dated 9th May, 1843. The first Court disallowed execution on the ground that it was barred by limitation. On regular appeal the Judge affirmed that order. A special appeal was admitted by this Court, and we reversed the orders of the Courts below. It is now pleaded, by way of review of judgment, that there was no special appeal with reference to the provisions of s. 27 of Act XXIII of 1861. There is no doubt that the suit out of which the execution proceedings arose is a suit of the nature cognizable in Courts of Small Causes, and that there will be no special appeal if the law of s. 27 of Act XXIII of 1861 is applicable to this case, but it is urged that it does not apply since the suit was instituted before the passing of the Act.

In my opinion the Act does apply, since the order in regular appeal was passed after Act XXIII of 1861 was enacted, and the terms of s. 27 are explicit, that “no special appeal shall lie from any decision or order which shall be passed on regular appeal after the passing of this Act in any suit of the nature cognizable in Courts of Small Causes.” The order being passed after the Act was passed there is no question of giving retrospective effect to the Act. Nor can I think, as suggested, that the words in the concluding part of the section “when the debt, damage, or demand for which the original suit *shall be* instituted” were meant to imply that the Act only operates on decrees or orders made in suits to be insti-

(1) See *Soorjo Coomar Surma Roy v. Krishto Coomar Chowdhry*, 12 B. L. R. 224; 14 W. R. F. B. 30.

tuted after the Act came into force. I cannot understand why the Legislature should have so intended, for though a suit may have been instituted before the Act was passed no right of special appeal would accrue, so the Act cannot be said to operate unjustly in taking away by retrospective action any right of appeal already accrued, when it is made to apply to decrees or orders passed after it came into force. The provisions of the new Civil Procedure Code may not be applicable for deciding this case, but it may be noticed that the provisions of s. 586 of Act X of 1877 admit of no doubt on the point, and they were presumably intended to re-enact the old law on the point, and the view I take is in accordance with a Full Bench of the Calcutta Court (1).

On the above view of the law, I am of opinion that this Court had not jurisdiction to hear the appeal, and I allow the review of judgment and dismiss the appeal. Each party should pay his own costs in this Court.

Appeal dismissed.

Before Mr. Justice Turner and Mr. Justice Oldfield.

BHAGIRATH (DEFENDANT) v. NAUBAT SINGH (PLAINTIFF),*

Mortgage—Contribution.

M, *B*, and *N* held mauza *D* in equal one-third shares, and *M* also held a share in mauza *A*. On the 3rd January, 1863, *M* and *B* mortgaged their shares in mauza *D* to *L* to secure a loan of certain moneys. On the 16th March, 1870, *M*, *B*, and *N* mortgaged mauza *D* to *R* to secure a loan of Rs. 600 and on the same day, by a separate deed, they mortgaged mauza *D*, and *M* mortgaged his share in mauza *A*, to *R*, to secure a loan of Rs. 1,600. On the 8th December, 1875, *L* obtained a decree for the sale of the shares of *M* and *B* in mauza *D* for the satisfaction of the mortgage-debt due to her. On the 18th April, 1876, *R* obtained a decree for the realisation of the mortgage-debts due to him by the sale of mauza *D* and *M*'s share in mauza *A*. On the 23rd October, 1876, the shares of *M* and *B* in mauza *D* were sold in the execution of *L*'s decree, and were purchased by *R*. A portion of the purchase-money was applied to satisfy *L*'s decree, and the balance of it was deposited in Court. Instead of applying to the Court to pay him this balance in execution of his decree dated the 18th April, 1876, *R* attached and obtained payment of such balance in execution of a decree for money which he held against *M* and *B*. On the 20th June, 1877, *R*, in execution of his decree dated the 18th April,

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(1) 12 B. L. R. 224 ; 14 W. R., F. B. 30.

* Second Appeal, No. 836 of 1878, from a decree of W. Lane Esq., Judge of Moradabad, dated the 13th June, 1878, reversing a decree of Maulvi Muhammad Sami-ul-la Khan, Subordinate Judge of Moradabad, dated the 6th March, 1878.