

*Before Mr. Justice McDonell and Mr. Justice Ghose.*

1885  
December 22.

DINENDRA NATH SANNYAL (JUDGMENT-DEBTOR) *v.* CHANDRA  
KISHORE MUNSHI (DECREE-HOLDER).\*

*Transfer of Property Act (IV of 1882), ss. 2, 67, 99—Mortgage decree—  
Execution.*

A decree-holder, who had obtained a decree in the year 1880 against his judgment-debtor declaring his title on certain mortgaged properties and authorizing a sale, sought, after several previous applications keeping the decree alive, to execute his decree again on the 15th April 1885. The judgment-debtor objected on the ground that no suit had been instituted or decree obtained under s. 67 of the Transfer of Property Act as directed by s. 99.

*Held*, that s. 99 of that Act was not intended to apply to decrees already obtained declaring a lien and authorizing a sale, but even assuming that it was so intended, s. 2 of the Act saved the right of the decree-holder to obtain a sale of the mortgage properties. *Ganga Sahai v. Kishen Sahai*, (1) distinguished.

IN this case one Chandra Kishore Munshi obtained, on the 15th December 1880, a decree upon a mortgage bond declaring his lien upon certain properties mortgaged to him and authorizing the sale of these properties against Dinendra Nath Sannyal, and on several occasions previous to this present application, had executed this decree against his judgment-debtor. On the 15th April 1885 he again applied for execution, but the judgment-debtor objected to the application, on the ground that under s. 99 of the Transfer of Property Act the property could not be brought to sale without instituting a suit and obtaining a decree thereon under s. 67 of that Act.

On the 20th June 1885, the Subordinate Judge overruled the objection and ordered execution to proceed.

The judgment-debtor appealed to the High Court.

Baboo Hem Ohunder Banerjee, and Baboo Sharoda Charan Mitter, for the appellant, contended that the Transfer of Property Act applied, and cited *Ganga Sahai v. Kishen Sahai* (1).

Baboo Iswar Chandra Chakerbati, for the respondent.

\* Appeal from Order No. 205 of 1885, against the order of Baboo Nilmani Dass, Subordinate Judge of Pubna, dated the 20th of June 1885.

(1) I. L. R., 6 All., 262.

The judgment of the Court (McDONELL and GHOSE, JJ.) was as follows :—

1885

DINENDRA  
NATH  
SANNYAL  
v.  
CHANDRA  
KISHORE  
MUNSHI.

It appears that the decree-holder in this case obtained against the judgment-debtor a decree upon a mortgage bond, declaring his lien upon the properties hypothecated therein and authorizing the sale of the said properties. This decree was passed on the 15th December 1880 before the Transfer of Property Act (IV of 1882) came into operation. The decree was, from time to time, enforced without any objection on the part of the judgment-debtor, but upon an application, out of which this appeal arises, having been made on the 15th April 1885, the judgment-debtor objected that, under s. 99 of the Transfer of Property Act, the decree could not be executed, and the property brought to sale, without instituting a suit and obtaining a decree under the provisions of s. 67 of that Act. The lower Court refused to give effect to this objection, and the appeal is against the order of the Subordinate Judge allowing execution to proceed.

It is contended before us that s. 99 of the Transfer of Property Act applies to all decrees, whether they be money decrees or mortgage decrees; and that in every case of the kind, if the decree was not obtained under s. 67, the mortgaged property cannot be sold.

We are unable to accede to this argument. As we read s. 99 it was never intended to apply to a decree already obtained declaring a lien over, and authorizing a sale of the mortgaged property. It was evidently intended to apply to other decrees not being mortgage decrees. But even if we were to concede that it was so, we are nevertheless of opinion that s. 2 of the Act saves the right of the decree-holder in the present case to obtain a sale of the property hypothecated to him. That section, among other matters, runs as follows :—

“But nothing herein contained shall be deemed to affect (e) any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability.”

Now, in the present case, a legal relation was constituted, before the Act came into force, between the parties by the decree that was passed in December 1880. By reason of this relation

1885

DIVENDRA  
NATH  
SANNYAL  
v.  
CHANDRA  
KISHORE  
MUNSHI.

the decree-holder has a "right" to enforce his decree for the satisfaction of his claim; and he is entitled to the "relief," in respect to such right, that he now prays for, *viz.*, to have the property sold in execution of the said decree.

The learned vakeel for the appellant quoted in support of his arguments the case of *Ganga Sahai v. Kishen Sahai* (1). All that we need say on the present occasion is, that the identical point raised in this case was not that which was raised in that case. There the question was one of procedure, here the question is one of substantive right.

We are, therefore, of opinion that the order passed by the lower Court was right, and we accordingly affirm it with costs.

T. A. P.

*Appeal dismissed.*

### APPELLATE CRIMINAL.

*Before Mr. Justice Cunningham and Mr. Justice Ghose.*

J. BRUOE v. C. CRONIN.

1886

January 7.

*Merchant Seamen's Act (Act I of 1859), s. 83—17 & 18 Vic. c. 104, ss. 243, (cls. 1 and 2) 288—Merchant Shipping Act, 1854—43 & 44 Vic. c. 16, s. 10—Merchant Seamen (Payment of Wages and Rating) Act, 1880—Imprisonment for desertion.*

The amendment of clauses 1 and 2 of s. 243 of 17 & 18 Vic. c. 104, by 43 & 44 Vic. c. 16, s. 10, does not affect the liability of seamen in Calcutta to imprisonment for offences under s. 83, cls. 1 and 2 of Act I of 1859.

THIS was a reference to the High Court by the Chief Presidency Magistrate of Calcutta, under s. 432 of the Code of Criminal Procedure.

It appeared that one Cornelius Cronin, a fireman on board the British steamship "City of Cambridge," was charged by the Chief Engineer of the Vessel, under cl. 2 of s. 83 of Act I of 1859 with being absent without leave from the vessel; the accused pleaded guilty, and was sentenced to 24 hours' imprisonment with hard labour.

\* Criminal Reference No. 3 of 1886, made under s. 432 by F. J. Marsden, Esq., Chief Presidency Magistrate of Calcutta, dated the 21st of December 1886.

(1) I. L. R., 5 All., 262.