

Before Sir John Edge, Kt., Chief Justice and Mr. Justice, Brodhurst.

MULMANTRI AND ANOTHER (JUDGMENT-DEBTORS) v. ASHFAK ALI MAD AND OTHERS (DECREE-HOLDERS).²²

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April 26.

Execution of decree—Decree passed against representative of debtor—Attachment of property as belonging to debtor—Objection to attachment by judgment-debtor setting up an independent title—Appeal from order disallowing objection—Civil Procedure Code, ss. 2, 244, 283.

The decree-holders in execution of a simple money decree passed against the legal representatives of their debtor, and which provided that it was to be enforced against the debtor's property, attached and sought to bring to sale a house as coming within the scope of the decree. The judgment-debtors objected to the attachment and proposed sale, on the ground that the house was their own private property and not the property of the debtor within the meaning of the decree, having been validly transferred to them during the debtor's life-time. The objection was disallowed by the Court of first instance.

Held that s. 283 of the Civil Procedure Code had no application, that the case fell within s. 244, and that an appeal would lie from the first Court's order. *Ram Ghulam v. Hazaru Kuar* (1) and *Sita Ram v. Bhagwan Das* (2) followed. *Shankar Dial v. Anir Haidar* (3), *Abdul Rahman v. Muhammad Yar* (4), *Awadh Kuari v. Raktu Tiwari* (5), *Chowdhry Wahed Ali v. Musammal Jumace* (6), *Ameer-oon-nissa Khatoon v. Meer Muhomed* (7), and *Kuriyali v. Mayan* (8), referred to.

THE respondents in this case obtained a simple money decree against the legal representatives of one Rai Chadammi Lal, deceased. The judgment-debtors were Musammal Mulmantri, the widow, and Rai Roshan Lal, the minor son of the deceased; the latter being under the guardianship of the former. In execution of this decree, the respondents attached and caused to be put up for sale a house with its appurtenances as the property of their debtor and subject to satisfaction of the decree. Thereupon the judgment-debtors filed objections to the attachment and proposed sale of the property in question, in the Court of the Subordinate Judge of Bareilly, in which the execution was proceeding. These objections contained the following statement:—"The decree-holder holds a decree against the property left by Rai Chadammi Lal, deceased. The attached property has been in the judgment-debtors' possession from during the life-time of the Rai Sahib, under a

* First Appeal No. 190 of 1886, from an order of Maulvi Abdul Qaiyum Khan, Subordinate Judge of Bareilly, dated the 15th February, 1886.

(1) I. L. R., 7 All. 547.
(2) I. L. R., 7 All. 733.
(3) I. L. R., 2 All. 752.
(4) I. L. R., 4 All. 190.

(5) I. L. R., 6 All. 109.
(6) 11 B. L. R. 449.
(7) 20 W. R., 280.
(8) I. L. R., 7 Mad. 255.

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tamlknama, dated the 23rd August, 1883. It cannot be attached and sold by auction. The decree-holder should bring to sale the property left by Rai Chadammi Lal. The property belonging to the claimants should not be sold." The objectors prayed the Court to release the property from attachment.

In reply, the decree-holders filed an answer which was to the effect that the *tamlknama* or deed of transfer of the 23rd August, 1883, was executed by Chadammi Lal for the purpose of defrauding his creditors, including themselves, that it represented a collusive and nominal transaction, and that the objectors were not transferees in good faith and for consideration, within the meaning of s. 53 of the Transfer of Property Act (IV of 1882).

The judgment of the Court of first instance was in the following terms:—"The *tamlknama* is subject to the just debts decreed incurred in the life-time of Chadammi Lal and before the deed. The objection should therefore be disallowed with costs and interest."

The defendants appealed to the High Court.

Mr. A. H. S. Reid, for the appellants.

Maulvi Abdul Majid (with him Syed Habibullah, Munshi Hanuman Prasad, and Munshi Madho Prasad), for the respondents.

A preliminary objection to the hearing of the appeal was taken by Maulvi Abdul Majid, on the ground that the order of the Court of first instance must be considered as passed under s. 281 of the Civil Procedure Code, and that, under s. 283, the order was therefore final. The order was not passed under s. 244, because the respondents, though parties to the suit in which the decree was passed, had not objected to the attachment and sale in that capacity, but in an independent capacity, setting up a title to the property distinct from that in which they were sued. Reference was made to *Shankar Dial v. Amir Haidar* (1), *Abdul Rahman v. Muhammad Yar* (2), *Awadh Kuari v. Raktu Tiwari* (3), *Ram Ghulam v. Hazaru Kuar* (4), and *Sita Ram v. Bhagwan Das* (5).

(1) I. L. R., 2 All. 752.

(2) I. L. R., 4 All. 190.

(3) I. L. R., 6 All. 109.

(4) I. L. R., 7 All. 547.

(5) I. L. R., 7 All. 733.

Mr. A. H. S. Reid, for the appellants, referred to *Chowdhry Wahed Ali v. Musammatt Jumae* (1), *Ameer-oon-nissa Khatoon v. Meer Mahomed* (2), and *Kuriyali v. Mayan* (3).

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Maulvi *Abdul Majid*, in reply.

EDGE, C. J.--There is a preliminary objection which we must dispose of. The plaintiffs obtained a money decree against certain persons who were the representatives of the debtor, and by that decree it was provided that the decree was to be enforced against the property which had belonged to the debtor. In executing that decree, the plaintiffs proposed to sell the property which the defendants-appellants here alleged was their own private property and had not come to them from the debtor, and that it was not the property which had been of the debtor within the meaning of the decree. The Court below decided against the defendants, and the appeal is brought here from that decision. It is contended here that this being an adjudication under s. 231 of the Civil Procedure Code, s. 283 applies, and there is no appeal. That preliminary objection is taken here by Mr. *Abdul Majid*. Three authorities have been cited by Mr. *Abdul Majid* in support of his contention, namely, *Shankar Dial v. Amir Haidar* (4), *Abdul Rahman v. Muhammad Yar* (5) and *Awadh Kuari v. Raktu Tiwari* (6).

As regards these authorities, I think I am right in saying as to the two first that there was, in the Act under which they were decided, no definition of the word "decree," such as we find in the present Code of Civil Procedure, Act XIV of 1882. Under the present Code of Civil Procedure, an order determining any question mentioned or referred to in s. 244, but not specified in s. 586, is a decree from which an appeal lies. If I am correct in saying that, and I think I am, the two first authorities would be no authorities at all. As regards the third authority, *Awadh Kuari v. Raktu Tiwari* (6), it would appear that in Act X of 1877, as amended by Act XII of 1879, under which the above case was decided, there was a corresponding clause, which made certain orders in the execution department decrees, and therefore appealable. But

(1) 11 B. L. R., 149.

(2) 20 W. R., 280.

(3) I. L. R., 7 Mad. 255.

(4) I. L. R., 2 All. 752

(5) I. L. R., 4 All. 190.

(6) I. L. R., 6 All. 109.

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that definition does not appear to have been brought to the attention of the learned Judges who decided that case. As regards the other cases cited by Mr. *Abdul Majid*, i. e., that of *Ram Ghulam v. Hazaru Kuar* (1) and that of *Sita Ram v. Bhagwan Das* (2), I find that they are authorities which, to my mind, distinctly show that this was a matter which came within s. 244 of the Civil Procedure Code. The decision in that matter was a decree, and appealable. I am bound to say that if there is a conflict of authorities on this matter, I prefer to follow the judgments in *Ram Ghulam v. Hazaru Kuar* (1), and *Sita Ram v. Bhagwan Das* (2). In addition to these cases, I think some light is thrown on the subject by the cases cited by Mr. *Reid*, namely, *Chowdhry Wahed Ali v. Musamma Jumae* (3), *Ameer-oon-nessa Khatoon v. Meer Mahomed* (4), *Kuriyali v. Mayan* (5).

It appears to me that this was a case under s. 244 of the Civil Procedure Code. The parties were clearly the same. But Mr. *Abdul Majid* argues that the parties are not the same, because they are setting up a different title from that under which they were sued. But I think the only thing which the defendants have done is that they have alleged, rightly or wrongly, that the property is their own private property, and not the property which came within the scope of the decree. Under these circumstances, I am of opinion that the case falls within s. 244 of the Civil Procedure Code and that an appeal lies.

BRODHURST, J.—I concur with that view.

The appeal was then heard, and the following issues were remitted to the Court of first instance, under s. 566 of the Civil Procedure Code:—

“ 1. Was the deed spoken of as the *tamliknama* executed for the purposes of defrauding creditors, or did it effect a *bond fide* transfer in favour of the appellants?

“ 2. Was the house under attachment held by the appellant Rai Roshan Lal in his own right under the deed, or did he inherit it from his father?

(1) I. L. R., 7 All. 547.

(3) 11 B. L. R., 155.

(2) I. L. R., 7 All. 733.

(4) 20 W. R., 280.

(5) I. L. R., 7 Mad. 255.

“3. Did the deceased, Rai Chadammi Lal, retain, after the execution of the deed, any interest which could be attached in execution of a decree against him, or against his representatives after his death?”

Upon the return of the findings upon these issues, the appeal again came before Edge, C. J., and Brodhurst, J., and was dismissed with costs.

Appeal dismissed.

CRIMINAL REVISIONAL.

Before Mr. Justice Mahmood.

QUEEN-EMPRESS v. NAND RAM AND OTHERS.

Criminal proceedings—Irregularity—Evidence given at previous trial treated as examination-in-chief—Criminal Procedure Code, ss. 553, 537—Act I of 1872, (Evidence Act), ss. 136, 167.

At the trial of a party of Hindus for rioting, the Magistrate, instead of examining the witnesses for the prosecution, caused to be produced copies of the examination-in-chief of the same witnesses which had been recorded at a previous trial of a party of Muhammadans who were opposed to the Hindus in the same riot. These copies were read out to the witnesses, who were then cross-examined by the prisoners, and no objection to this procedure was taken on the prisoners' behalf. The accused were convicted.

Held that although the procedure adopted by the Magistrate was irregular, the irregularity was cured by the provisions of s. 537 of the Criminal Procedure Code and of s. 167 of the Evidence Act (I of 1872), as it was not shown that there had been any failure of justice or that the accused had been substantially prejudiced, and as the matters elicited in cross-examination were sufficient to sustain the conviction.

The facts of this case are sufficiently stated in the judgment of the Court.

Mr. C. Dillon, for the petitioner.

The Government Pleader (Munshi Ram Prasad), for the Crown.

MAHMOOD, J.—This is a case in which two parties, Hindus and Muhammadans, were accused of rioting and convicted under s. 147 of the Indian Penal Code. In the trial of the Muhammadan party a number of witnesses were produced and examined on behalf of the prosecution. In the trial of the Hindus, which was subsequently held, the Magistrate, instead of examining the witnesses, had the copies of the examination-in-chief of the witnesses

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