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THE DELHI
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v.
RAM NARAIN.

is, that s. 493 provides a penalty for the breach of an injunction granted under s. 492, and the penalty there provided is not the one contended for. I fail to see why we should read into the section words which are not found there, in order to provide another penalty. The omission of any such words in s. 492 or s. 493 is all the more marked when we turn to ss. 274 and 276 of the same Code. Those sections relate to attachment of property, and even in the case of attachment of property under s. 274, a subsequent private alienation of the property is not rendered void, even as against claims enforceable under the attachment, unless the attachment has been made by actual seizure or by written order duly intimated or made known. In conclusion, I can find neither in the Codes, case law, nor text-books, any authority to support the contention of the defendant in this action. Under these circumstances the appeal must be allowed with costs, and the decree of the lower Court must be set aside; the relief prayed for in paras. A, B, C, D, of the plaint must be decreed with costs here and below. Mr. Colvin, relying on the strength of his point, has not raised the question as to whether or not the injunction was legally made. We do not consider it necessary to enter into that question.

MAHMOOD, J.—I agree.

Appeal allowed.

1887
April 7.

Before Mr. Justice Straight and Mr. Justice Mahmood.

HULAS RAI AND ANOTHER (PLAINIFFS) v. PARTHI SINGH AND ANOTHER
(DEFENDANTS)*.

Mortgage—Decree for foreclosure—Order allowing mortgagor to deposit in Court amount due after date fixed—Ministerial act—Order not appealable—Civil Procedure Code, ss. 244, 588—Act IV of 1882 (Transfer of Property Act), s. 87.

S. 244 of the Civil Procedure Code contemplates that there must be some question in controversy and conflict in execution which has been brought to a final determination and conclusion so as to be binding upon the parties to the proceedings, and which must relate in terms to the execution, discharge or satisfaction of the decree.

A judgment-debtor under a decree for foreclosure made an application to the Court two days after the expiry of the time prescribed by the decree for payment of the amount due thereunder, in which she alleged that, by reason of

* First Appeal, No. 28 of 1887, from an order of Maulvi Abdul Basit, Subordinate Judge of Mainpuri, dated the 25th January, 1887.

the two previous days having been holidays, she had been unable to pay the money before, and asked to be allowed to deposit the same. Upon this application the Court passed the following order:—"Permission granted. Applicant may deposit the money." The money was deposited accordingly.

Held that the order was merely a ministerial act, and nothing more than a direction from the Judge to his subordinate official to receive the money, which, as it did not fall within either s. 244 or s. 533 of the Civil Procedure Code, was not appealable; and that the proper remedy of the decree-holder, assuming the deposit to have not been made in time, was to apply for an order absolute for foreclosure, which order would be subject to any steps the parties affected by it might take by way of appeal or otherwise.

THIS was a first appeal from an order of the Subordinate Judge of Mainpuri, dated the 25th January, 1887. The principal facts of the case are stated in the judgment of the Court. The appellants obtained against the respondents a decree for foreclosure of a mortgage executed by the latter in their favour: and, by an order of the High Court, dated the 11th January, 1887, an extension of time was granted to the respondents for payment of the amount due under the decree, up to the 23rd January, 1887. That day and the next were close holidays. On the 25th January, the following petition was filed in the Court of the Subordinate Judge, on behalf of the respondents:—

"The aforesaid defendants beg to state that in the case noted above, the 23rd January, 1887, was fixed, under the High Court's order, as the latest day for payment of the decretal money; that they had consequently procured money on that day, but the 23rd and 24th days of January, 1887, were holidays; and that they therefore pray that they may be allowed to deposit the decree-money, which they have brought with them, to-day, on the re-opening of the Court."

Upon this petition the Subordinate Judge passed the following order:—"Permission granted. Applicant may deposit the money." The amount tendered, *viz.*, Rs. 7,096-5-7; was accordingly paid into Court.

The decree-holders appealed from the Subordinate Judge's order to the High Court, on the ground that the Court of first instance was not competent to accept payment of the mortgage-money after the expiry of the prescribed period.

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Maulvi *Abdul Majid* and Munshi *Hanuman Prasad*, for the appellants.

Babu *Baroda Prasad Ghose*, for the respondents.

STRAIGHT, J.—In this case the circumstances out of which this first appeal from order arises may be conveniently stated in order to make the view that I take of the preliminary objection which has been raised from the Bench itself intelligible. The appellants before us obtained a foreclosure decree in their favour on the 22nd March, 1886, which, it is conceded, was prepared in accordance with the terms of s. 86 of the Transfer of Property Act. By that decree it was provided, among other matters, that, in the event of the mortgage money not being paid on or before the 22nd September, 1886, the property would be foreclosed, with the necessary other alternative that, if it was paid on or before that date, the mortgagor would be entitled to the possession of the property. The matters that occurred subsequent to that decree are not very clear; but it would seem that the judgment-debtor, whose name was Lala Pirthi Singh, was insane or a lunatic, and an application was made on the 20th September, that is to say, two days before the period limited by the foreclosure decree had run out, by the wife of the judgment-debtor to the Court granting the decree, for an extension of time from the 22nd of September, the date upon which the foreclosure would otherwise ensue, and that the Subordinate Judge refused that application. From that refusal there was an appeal to this Court, which, on the 11th January, 1887, granted an extension of time to the 23rd January, 1887 (1) and for the purpose of dealing with this appeal, we must, in my opinion, regard the decree obtained by the appellants on the 22nd March as having had written into it the 23rd January, 1887, instead of the 22nd September, 1886. It is admitted that the 23rd January was a holiday when the Court which passed this order was closed,

(1) The judgment of Edge, C. J., (in which Oldfield, J., concurred) was as follows:—"In this case, it is alleged on behalf of the appellant, and not denied on behalf of the respondent, that the principal debtor is insane. Under these circumstances, we think that the Judge below ought to have granted a reasonable extension of the time. It is said also that this is not a case in which there can be an appeal. It appears to

us that it does come within the subsection (c) of s. 244 of the Civil Procedure Code. It is a question relating to the execution, discharge, or satisfaction of the decree." Under these circumstances we allow the appeal without costs, and make an order that the appellant shall have until the 23rd January, 1887, to make payment of the amount due under the decree."

and it is also admitted that the 24th January was also a holiday, and on the 25th January, 1887, the second respondent appeared in the Court of the Subordinate Judge and presented a petition, alleging that by reason of those two days having been holidays—one being the date for the deposit—she had not been able to pay in the money, and stating that the money having been brought along with her, she asked to be allowed to deposit that money. There was nothing, to my mind, in that petition which may be regarded as in the nature of a petition judicially filed, *i. e.*, as a legal document filed in the course of a suit. It was an application to the Court that originally passed the decree, asking it to receive a certain sum of money, which the party wished to deposit. Upon the face of that petition an order was granted, which I take to be nothing more than a direction from the Subordinate Judge to his subordinate official to receive the money. Upon this order passed by the Subordinate Judge, it is now admitted, and is beyond all question, that the money was deposited in the Court of the Subordinate Judge.

These are the facts upon which the applicants have presented the appeal to this Court, and it is this order of the Subordinate Judge directing that the money might be deposited with the officer of the Court, which is sought to be made the subject of the appeal from order.

Now, objection was taken by my brother Mahmood and myself to there being any appeal from an order of this kind. It can only be, and could only be, appealable if it is an order of the class and description mentioned in s. 244 of the Civil Procedure Code, or an order of the kind mentioned in s. 588 of the Code. As to s. 588, it is obvious that this order is not within that section, as we do not find it there. As to its being within the purview of s. 244 of the Code, it seems to me that that section contemplates that there must be some question in controversy and conflict in execution which had been brought to a final determination and conclusion so as to be binding upon the parties to the proceedings, and which must relate in terms to the execution, discharge or satisfaction of the decree. In my opinion this sanction to the deposit of money was merely a ministerial act, and the fact that by operation

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of law such deposit may result in certain consequences which will take legal shape in a judicial order of the Court, does not alter its character. That formal order will itself be subject to any steps which the parties affected by it may think proper to take by way of appeal or otherwise. If the deposit was made in time, the mortgagor is entitled to the benefits that are provided for him in s. 87 of the Transfer of Property Act; if it has not been made in time, the mortgagee, who is represented by the appellants here, is entitled to make the application provided for in sub-section 2 of s. 87 of the Transfer of Property Act, with the consequence that if he obtains an order as therein provided, on the passing of such order, the mortgage-debt will be discharged. And that is, in my opinion, a step which the mortgagees-appellants must first take, before they have laid the foundation for coming into this Court to impeach the propriety of the action of the Subordinate Judge in allowing the deposit to be made. In short, it comes to this, that the order was purely a ministerial order not falling within the purview of s. 244 or s. 588 of the Civil Procedure Code, and, as such, cannot be made the subject-matter of appeal. Without, therefore, discussing or determining the other questions raised in the appeal, I am of opinion that as no appeal lay we have no alternative but to dismiss it with costs.

MAHMOOD, J.—I am entirely of the same opinion, and only wish to add that the judgment of the learned Chief Justice and my brother Oldfield, in F. A. from Order No. 223 of 1886, disposed of on the 11th January, 1887 (1) does not, in my opinion, lay down any rule which is inconsistent with what my learned brother has said, and which I think is the point upon which our judgment should be based, namely, that no appeal lies from an order such as the order of the 25th January, 1887, from which this appeal has been preferred. I would, therefore, dismiss the appeal with costs.

Appeal dismissed.

(1) *Ante*, p. 502, note.