

1887

BBNI  
SHANKAR  
SHELHAT  
v.  
MAMPAL  
BAHADUR  
SANGH.

led him in Gházipur to discover that Bisheshar and Baldeo were mere *ism-farzi* for the stranger-bankers at Benares, the Shelhatjis.

Some objections were filed on behalf of the respondent; but his learned counsel declined to support them. We accordingly disallow the objections. And dismissing the appeal of the defendants, we direct that they pay all the costs of the appeal.

*Appeal dismissed.*

1887  
March 18.

*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Mahmood.*

JOHARI MAL AND ANOTHER (JUDGMENT-DEBTORS) v. SANT LAL  
AND OTHERS (DECREE-HOLDERS).\*

*Execution of decree—Decree for sale of hypothecated property and against judgment-debtor personally—Execution against judgment-debtor's person—Decree-holder entitled to proceed against property or person as he might think fit.*

Where a decree upon a hypothecation bond allows satisfaction of the debt from the hypothecated property and also from the judgment-debtor personally, and contains no condition that execution shall first be enforced against the property, and where there is no question of fraud being perpetrated on the judgment-debtor, there is no principle of equity which prevents the decree-holder from enforcing his decree against the judgment-debtor's person or property, whichever he may think best. *Wali Muhammad v. Turab Ali* (1) explained.

In this case Sant Lal and others had obtained a decree upon a hypothecation bond against Jotari Mal and Kalian Das. The decree allowed satisfaction of the debt from the hypothecated property and also from the judgment-debtors personally. In the execution department, the judgment-debtors contended that the decree should be executed first against the hypothecated property, and if any balance remained due under the decree, then against their persons. The Court executing the decree, (Subordinate Judge of Aligarh) dismissed the objection raised by the judgment-debtors on this point, observing that the Court had only to execute the decree as it stood, and the decree contained no condition to the effect that execution should first be enforced against the hypothecated property, but left it optional to the decree-holder whether it should be enforced against the property or against the persons of the judgment-debtors.

\* First Appeal, No. 20 of 1887, from an order of Babu Abinash Chandra Banerji, Subordinate Judge of Aligarh, dated the 6th November, 1886.

The judgment-debtors appealed from this order to the High Court. It was contended on their behalf that, applying the principles of equity to the case, the Court should not have ordered execution of the decree against their persons until it had been found that the decree could not be wholly satisfied by sale of the hypothecated property. The case of *Wali Muhammad v. Turab Ali* (1) was referred to.

Munshi *Kashi Prasad*, for the appellants.

The respondents were not represented.

EDGE, C. J.—In this case the decree-holders obtained a decree against the hypothecated property and against the defendants personally. They applied for execution of the decree against the judgment-debtors, and an order was made in accordance with the application. This order is now the subject of this appeal. It is contended that there is a principle of equity which applied. The alleged principle is that when a creditor has got a decree against the person of his debtor and against the debtor's property, he is bound to go against the property before seeking his remedy against the person. In support of this there is a case—*Wali Muhammad v. Turab Ali*, (1) which has been cited. On looking at that case [it is obvious that the learned Judges there were forced to exercise an equitable jurisdiction in order to prevent a fraud being perpetrated on the judgment-debtor. I am also told by my brother Mahmood, who was present in that case, that, to the best of his recollection, the construction I have put on that case is the right one. It is a pity that the facts are not fully reported, but it is reported fully enough to draw this conclusion. No such fraud arises here. The decree-holder was entitled to enforce his decree against the person or the property of the judgment-debtor, whichever he thought best.

This appeal is dismissed.

MAHMOOD, J.—I agree.

*Appeal dismissed.*

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(1) L. L. R., 4 All. 497.