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entitled to put the plaintiff to the proof of his title; or, in other words, that the plaintiff should have proved his mortgage-deed as against him. It is true that he was no party to the decree obtained against the mortgagor, but the basis of his title to claim the property has been found to be a mere nullity, and therefore the plaintiff is entitled to succeed on the basis of the decree, which stands unimpeached.

The plaintiff also claimed costs incurred by him in the execution department on the defendant's objection. These costs were decreed by the Court below. I have no hesitation in holding what my brother Mahmood has held in the case of *Mahram Das* v. *Ajudhia* (1), that where a Court has jurisdiction and orders or refuses costs, the parties cannot bring a separate action for such costs. The plaintiff is, therefore, not entitled to recover from the defendant the costs incurred by him in the execution department, and to this extent the defendant's appeal will be allowed, and the decree of the lower Court will be modified, the rest of the decree being confirmed. The appellant will bear all costs.

MAHMOOD, J.—I entirely agree.

Appeal allowed in part.

1887
March 12.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

JANI BEGAM (PLAINTIFF) *v.* JAHANGIR KHAN (DEFENDANT).*

Act IV of 1882 (*Transfer of Property Act*), s. 135—*Transfer of a claim for a smaller value—Transferee not entitled to recover more than price paid for claim.*

S. 135 (*d*) of the Transfer of Property Act (IV of 1882) means that if a creditor or party having an actionable claim against another, has put it into Court and has proceeded to proof of it to the point at which judgment has been delivered affirming it, or the liability of the defendant has been so clearly established that judgment must be delivered against him, the mischief or danger of any trafficking or speculation in litigation disappears, and the defendant can suffer no prejudice by any arrangement between the plaintiff and a third person as to who is to enjoy the fruits of the decree, nor is there any probability that the process of the Court will be misused. On the other hand, if one who has an actionable claim against another chooses to sell it for less than its actual value, the person who buys embarks more or less in a speculation which can be defeated by payment to him of the price paid for it with interest and incidental expenses.

* First Appeal, No. 88 of 1886, from a decree of Maulvi Muhammad Qaiyum Khan, Subordinate Judge of Bareilly, dated the 1st March, 1886.

(1) I. L. R., 8 All. 452.

The debtor's right to discharge himself by such payment is not forfeited by his putting the assignee to proof of his case in Court, nor did the Legislature intend that the position of the assignee should be better after suit and decree than before. *Grish Chandra* v. *Kashisauri Debi* (1) dissented from. *Ch dambara Chetty* v. *R nga K. M. V. Puchaiya Naickar* (2), and *Ram Coomar Coondoo* v. *Chunder Canto Mookerjee* (3) referred to.

The assignee, under an instrument dated the 18th December, 1885, and in consideration of Rs. 5,000, of a share of Rs. 10,000 out of Rs. 20,000 claimed by his assignors as unpaid dower-debt, joined with the assignors in instituting a suit for recovery of the dower-debt, on the 22nd December of the same year.

Held that the assignee's proceedings were of the nature contemplated by s. 135 of the Transfer of Property Act (IV of 1882), and that he was not entitled to a decree for anything in excess of Rs. 5,000, the price paid by him for the Rs. 10,000 share of the debt.

THIS was a suit against one Jahangir Khan for recovery of Rs. 20,000 as part of the unpaid dower-debt of his wife Jafri Begam, who died on the 17th January, 1883. The suit was brought on the 22nd December, 1885, by Wilaiti Begam, the mother, and Shafeh-ul-lah Khan, and Hafiz-ullah Khan, brothers of the deceased Jafri Begam, together with one Jani Begam, to whom, by a deed executed on the 18th December, 1885, they had assigned half their interests in the dower-debt for Rs. 5,000. The plaintiffs alleged that upon the marriage of Jafri Begam with the defendant her dower was fixed at Rs. 80,000 ; that the defendant had paid no part of this sum ; that according to the Muhammadan law the amount of the debt was divisible into six *sihams*, to three of which the defendant was entitled, and the other three were due to the plaintiffs Nos. 1, 2 and 3 ; and that they claimed Rs. 20,000 only, instead of Rs. 40,000, out of consideration for the inability of the defendant to meet the larger demand. The defendant in reply to the suit, so far as concerned the plaintiffs Wilaiti Begam, Shafeh-ul-lah Khan and Hafiz-ullah Khan, raised various pleas which are not material to the purposes of this report. In reply to the plaintiff Jani Begam, he pleaded that, under s. 135 of the Transfer of Property Act (IV of 1882), she was not competent to sue for anything in excess of the sum of Rs. 5,000, which was the price paid by her under the deed of the 18th December, 1885.

The Court of first instance (Subordinate Judge of Bareilly) found in favour of the plaintiffs upon all the points raised, except

(1) I. L. R., 13 Calc. 145. (2) L. R., 1 I. A. 241 ; 13 B. L. R. 509.
(3) L. R. 2 App. Cas. 186 ; L. R., 4 I. A. 23.

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that which related to the assignment in favour of the plaintiff Jani Begam. Upon this point the Court observed as follows:—"Under these circumstances, the purchaser, under the provisions of s. 135 of the Transfer of Property Act, cannot obtain a decree for anything in excess of Rs. 5,000. It has been admitted that the three plaintiffs are, out of six *sihams*, shareholders of one *siham* each, and each has sold half his share to Jani Begam for Rs. 5,000, after relinquishing half of his demand on account of the entire marriage-dower. The share of plaintiffs Nos. 1, 2, and 3 out of Rs. 80,000 is Rs. 40,000, and they have relinquished the claim for Rs. 20,000 and have claimed the remaining sum of Rs. 20,000, and out of Rs. 20,000, Jani Begam is, according to the contents of the sale-deed and the petition of plaint, a purchaser of Rs. 10,000 for Rs. 5,000; but she cannot, according to the provisions of s. 135, obtain a decree for anything in excess of Rs. 5,000. Therefore a decree should be made for Rs. 10,000 in favour of plaintiffs Nos. 1, 2 and 3, and for Rs. 5,000 in favour of Jani Begam, plaintiff No. 4. Ordered, that the claim for Rs. 15,000 be decreed, and the rest dismissed."

On appeal to the High Court from this decree by Jani Begam, it was contended on her behalf that, having regard to clause (*d*) of s. 135 of the Transfer of Property Act, and to the fact that the defendant had entirely failed to establish the defence set up by him, the Court of first instance was wrong in limiting the decree in her favour to the amount of the consideration for the sale of the 18th December, 1885.

Pandit *Bishambhar Nath*, for the appellant.

Babu *Jogindro Nath Chaudhri*, for the respondent.

STRAIGHT, J.—Musammat Jani Begam, the fourth plaintiff in the suit, is the only appellant before us as assignee for a consideration of Rs. 5,000 of a share of Rs. 10,000 out of Rs. 20,000 claimed by the other plaintiffs on account of the dower-debt alleged to be due from the defendant to Musammat Jafri Begam, deceased, the daughter of plaintiff No. 1, and sister of plaintiffs Nos. 2 and 3. It may be taken as established that by a sale-deed of the 18th December, 1885, the appellant, for a sum of Rs. 5,000 then paid,

purchased the rights of plaintiffs Nos. 1, 2 and 3, as heirs of Jafri Begam to recover Rs. 10,000 from the defendant. The present suit was instituted on the 22nd of December, 1885, and the single question with which we are concerned in appeal is whether the Court below was right in holding the appellant barred from recovering more than Rs. 5,000, the price paid by her for the Rs. 10,000 of the debt, by the provisions of s. 135 of the Transfer of Property Act, 1882. In support of the appeal that he was not, our attention has been called to *Grish Chandra* v. *Kashisawri Debi* (1), and no doubt that is an authority directly in point. I regret, however, that upon careful consideration, I am unable to concur with the views of the learned Judges who were parties to that decision. With great deference it seems to me that they overlooked the object with which s. 135 was framed, namely, the prevention of speculation in actionable claims, or, in other words, the buying cheap the right of action of one person against another. Clause (*d*) of s. 135, to which the learned Judges refer in support of their view, appears to me to suggest an entirely different inference to that drawn by them. As I read it, what it means is that, if a creditor or party having an actionable claim against another, has put it into Court and has proceeded to proof of it to the point at which judgment has been delivered affirming it, or the liability of the defendant has been so clearly established that judgment must be delivered against him, then the mischief or danger of any trafficking or speculation in litigation disappears, and the defendant can suffer no prejudice by any arrangement between the plaintiff and a third person as to who is to enjoy the fruits of the decree, nor is there any probability that the process of the Court will be misused. On the other hand, if a person having an actionable claim against another, chooses to sell it cheap, or for less than its actual value, the person who buys undoubtedly embarks more or less in a speculation, which admittedly and on the plain terms of s. 135 can be defeated before suit brought by payment to him of the price paid for it with interest and incidental expenses. If the law in such circumstances places him at that disadvantage, why should his position be a higher and better one because the party said to be liable to the claim, says—Prove the case in Court, and you the

(1) I. L. R., 13 Calc. 145.

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assignee, prove what you paid for the interest in it, on the strength of which you set up your right? What greater morality is there in the *status* of the assignee after suit and decree than before? I confess I can see none, nor do I think that the Legislature intended to inflict a penalty on a person against whom an actionable claim might subsist in the hands of an assignee, by making him forfeit a right he would otherwise have had, because he puts such assignee to proof of the kind I have indicated. Moreover, this absurdity would arise, that the assignee might exact a false price, and so drive such person into Court, and yet if the latter proved the true price, he could not be ordered to pay that, but would have to satisfy the whole claim. I need only add that the principle which is embodied in s. 135 of the Transfer of Property Act is very fully and clearly stated in ss. 1048 to 1057, inclusive, of Story's *Equity Jurisprudence* by Grigsby, ed. 1884, which provision, following on the cases decided by their Lordships of the Privy Council of *Chedambara Chetty* v. *Renga K. M. V. Puchaiya Naickar* (1) and *Ram Coomar Coondoo* v. *Chunder Canto Mookerjee* (2), shows that the Legislature intended by statutory enactment to adopt the doctrine of champerty recognised by the English Courts. The present case was essentially one to my mind in which the plaintiff-appellant's proceedings came within the mischief contemplated by s. 135, and holding the Subordinate Judge's view to have been right for the reasons I have given, I would dismiss the appeal with costs.

TYRRELL, J.—I concur.

Appeal dismissed.

1887
March 16.

Before Mr Justice Straight and Mr. Justice Tyrrell.

BENI SHANKAR SHELHAT AND OTHERS (DEFENDANTS) v. MAHPAL BAHADUR SINGH (PLAINTIFF.)*

Pre-emption—Co-sharers—Recorded co-sharers—Benami purchase of shares—Sale by co-sharer—Claim for pre-emption resisted by person alleging himself to be co-sharer by virtue of benami transaction—Equitable estoppel.

A secret purchase *benami* of shares in a village does not constitute the purchaser a co-sharer for the purposes of pre-emption either under the Muhammadan Law or under the provisions of a *wajib-ul-arz*, so as to enable him upon the

* First Appeal, No 207 of 1885, from a decree of Pandit Kashi Narain, Subordinate Judge of Ghazipur, dated the 4th September, 1885.

(1) L. R., 4 I .A. 241 ; 13 B. L. R. 509.
(2) L. R., 2 App. Cas, 186 ; L. R., 4 I. A. 23.