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NAURANGI
KUNWAR
v.
RAGHUBANSI
KUNWAR.

due to her husband. The application was opposed by Raghubansi Kunwar, daughter of the deceased. The District Judge passed an order as follows:—"Certificate granted to Musammat Naurangi on condition of her giving security to Musammat Raghubansi."

From this order Naurangi appealed to the High Court and applied for a fresh certificate, on the ground that the District Judge should not have made his grant of the certificate to her conditional upon her giving security to Raghubansi.

Babu *Jogindro Nath Chaudhri*, for the appellant.

Lala Juala Prasad, for the respondent.

A preliminary objection was taken on behalf of the respondent that no appeal lay in the case to the High Court under s. 6 of Act XXVII of 1860.

EDGE, C. J.—I agree with the contention of Mr. *Juala Prasad* that no appeal lies in this case to this Court. The fresh certificate contemplated by s. 6 of Act XXVII of 1860 means a certificate granted to a person other than the person to whom the first certificate was granted. The appeal is dismissed with costs.

OLDFIELD, J.—I concur.

Appeal dismissed.

CIVIL REVISIONAL.

Before Mr. Justice Brodhurst and Mr. Justice Tyrrell.

PARAS RAM (PETITIONER) v. KARAM SINGH AND OTHERS (OPPOSITE PARTIES).*

Execution of decree—Order of attachment—Judgment-debtor declared insolvent—Appointment of receiver—Vesting of insolvent's property in receiver—Objection to attachment—Jurisdiction to entertain objection—Civil Procedure Code, ss. 278, 251, 254.

Where property has been made the subject of attachment under Chapter XIX of the Civil Procedure Code, the right of an objector to assert his claim to be the true owner of the property under s. 278, and the jurisdiction of the Court to entertain the objection, are not ousted by the mere circumstance that the judgment-debtor has been declared an insolvent, and his property vested in a receiver under Chapter XX. It is the judgment-debtor's property only, not that of the objector, that is thus vested.

* Application No. 223 of 1886 for revision of an order of F. R. Wyer, Esq., District Judge of Meerut, dated the 13th August, 1886.

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THIS was an application for revision of an order of the District Judge of Meerut, refusing to entertain an objection made by the applicant under s. 278 of the Civil Procedure Code. It appeared that certain property was attached in execution of a decree held by certain persons against one Ude Singh. An order was subsequently passed under s. 351 of the Civil Procedure Code, declaring the judgment-debtor an insolvent and appointing a receiver of his property, in whom thereupon all his property vested under s. 354. After this, an application was made under s. 278 by one Paras Ram, objecting that the property was not liable to attachment, on the ground that it belonged to him and not to the judgment-debtor. Upon this application the District Judge of Meerut passed the following order :—

“So far as I can understand the provisions of the Civil Procedure Code, I have no jurisdiction to entertain this objection. If the receiver wrongly converts the property in question, he will be liable to the objector, who can proceed by regular suit. This objection should be certified to the receiver, who will after inquiry act as he thinks fit, and on his own responsibility. He can apply to have the property released—i.e., made over to the objector—if he finds that the judgment-debtor’s claim to the property is not made out ; or he can convert it. If the objector applies, I am willing to postpone the sale of the property in dispute, pending application for revision of this order, for three months.”

The objector applied to the High Court for revision of this order, on the ground that the District Judge had erroneously declined to exercise his jurisdiction.

Munshi *Kashi Prasad*, for the applicant.

Munshi *Ram Prasad*, for the opposite parties.

BRODHURST and TYRBELL, JJ.—The Judge was wrong in refusing to entertain the applicant’s objection under s. 278 of the Civil Procedure Code. If the property had been made the subject of an attachment under Chapter XIX of the Code, the right of the objector to assert his claim to be the true owner of the property would not be ousted by the mere circumstance that the judgment-debtor had been declared insolvent, and that his property had been vested in a receiver under Chapter XX. It would be the insolvent’s

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property only, not that of the objector, that would become thus vested. The application must be entertained, and if it be found that the property in question had been attached in execution of a decree against the insolvent, the Court below will have next to determine the issue of fact raised by the objector under s. 278, and determine the case accordingly. The case is remanded under s. 562 to be disposed of as above indicated, and the costs so far will be costs in the cause.

Cause remanded.

APPELLATE CIVIL.

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January 12.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

SHIAM SUNDAR (PLAINTIFF) v. AMANANT BEGAM (DEFENDANT).*

Pre-emption—Wajib-ul-arz—Co-sharers—Effect of perfect partition—Act XIX of 1873 (N.-W. P. Land Revenue Act), s. 191—Limitation—Act XV of 1877 (Limitation Act), sch. ii, No. 10—“Physical possession”—Purchase of equity of redemption by mortgagee in possession—Aequiescence—Equitable estoppel.

The *wajib-ul-arz* of three villages which originally formed a single mahal gave a right of pre-emption to co-sharers in case of transfers of shares to strangers. Afterwards the shares in these villages were made the subject of a perfect partition, and divided into separate mahals. Subsequently, by two deeds of sale executed on the 13th January, 1884, and registered on the 17th January, 1884, some of the original co-sharers sold to strangers their shares in all three villages. At the time of the sale, the shares in two of the villages were in possession of the vendees under a possessory mortgage, the amount due upon which was set off against the purchase-money. The share in the third village was, at the time of the sale, in possession of another of the original co-sharers under a possessory mortgage. On the 17th January, 1885, this last-mentioned co-sharer brought a suit against the vendors and the vendees to enforce his right of pre-emption under the *wajib-ul-arz* in respect of the shares sold in the three villages.

Held that, notwithstanding the partition of the village into separate mahals, the existing *wajib-ul-arz* at the time of partition must be presumed to subsist and govern the separate mahals, until it was shown that a new one had been made. *Gopal Singh v. Mannu Lal* (1) referred to.

* *Held* that in the case of the sale of an equity of redemption by the mortgagor to the mortgagee in possession, which has the effect of extinguishing the right to redeem by a merger of the two estates in the mortgagee, it cannot

* First Appeal No. 185 of 1885, from a decree of Maulvi Mirza Abid Ali Beg, Subordinate Judge of Shahjahanpur, dated the 17th June, 1885.

(1) L. L. P. 7 AB. 772.