

Before Mr. Justice Mahmood.

1887
December 3

PRAN KUAR (JUDGMENT-DEBTOR) v. DURGA PRASAD (DECREE-HOLDER).*

Execution of decree—Decree for enforcement of hypothecation—Decree limiting judgment-debtor's liability to the hypothecated property.

A decree upon a hypothecation bond which only provides for its enforcement against the hypothecated property cannot be executed against the person or other property of the judgment-debtor, though an order for costs contained therein may be so executed.

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

Babu *Ratan Chand*, for the appellant.

Munshi *Kashi Prasad*, for the respondent.

MAHMOOD, J.—The facts of the case, as they have been put before me by the learned pleaders of the parties, are the following:—

The present appellant, Musammat Pran Kuar, judgment-debtor, executed a hypothecation bond in favour of Sahu Durga Prasad, the decree-holder-respondent before me, who, having sued upon the bond, obtained a decree on the 7th July, 1881. It is also admitted that the decree was put into execution, and the property hypothecated in the bond, the lien created whereby was given effect to by the decree, has already been brought to sale in execution of the decree.

The present litigation has arisen out of an application made by the decree-holder for the execution of the above-mentioned decree, not against the hypothecated property, but against the other property of the judgment-debtor, the appellant before me, and personally against her. To this application objections were taken by the appellant, in which the main contention urged by her was that neither was she personally liable nor her property other than that hypothecated could be sold in execution. This contention was accepted by the Court of first instance, which disallowed the application, but upon appeal to the lower appellate Court, the learned Judge of that Court reversed the first Court's order in a judgment which runs

* Second Appeal No. 1785 of 1886 from a decree of C. W. P. Watts, Esq., District Judge of Moradabad, dated the 6th August, 1886, reversing a decree of Babu Gopal Datta, Munsif of Bilari, dated the 16th January, 1886.

1887

RAN KUMAR
v.
DURGHA
PRASAD.

as follows :—“ The prayer for relief distinctly asks that if the hypothecated property be not sufficient, decree may be satisfied from the other property of the debtor. Now decree was given according to the claim. One would suppose that the Munsif had never seen the file. I accept the appeal and cancel the order of the Munsif with costs. Decree can be executed against the other property of the judgment-debtor, but as to her person I say nothing.”

From this order this second appeal has been preferred, and Mr. *Ratan Chand* for the appellant contends that the only point on which he relies in support of the appeal is that the terms of the decree of the 7th July, 1881, cannot bear the interpretation which the learned Judge of the lower appellate Court has put upon it. The original decree is framed in the Hindustani language and I have carefully read its terms. The effect, as I understand, of the original Hindustani may be represented in English in the following terms :—“ It is ordered and decreed that Rs. 946-5-0, the money claimed, and Rs. 97-14-6 costs, making a total of Rs. 1,044-3-6, together with future interest at annas eight per cent. per mensem, be decreed *ex parte* against the defendant. If the defendant within a period of six months pays up the amount decreed, then the decree will become inoperative ; otherwise it will be executed, and the hypothecated property having been brought to sale, the decretal amount will be paid from the proceeds thereof ; and it is also ordered that the defendant pay to the plaintiff the sum of Rs. 99-14-6 in respect of costs of this Court to which she has been rendered liable.

Mr. *Ratan Chand* argues that these terms of the decree are limited to the liability of the hypothecated property and do not render the judgment-debtor liable personally to any execution that can be taken out under the decree. I am of opinion that this contention is sound, but only to a partial extent. In the case of *Raghubar Dayal v. Ilahi Bahsh* (1) Mr. Justice Oldfield and myself had to consider a similar question of the interpretation of a decree, and in that case both of us concurred in holding that a decree that was worded similarly to this so far as the present point is concerned,

(1) I. L. R., 7 All, 450.

was limited to the liability of the hypothecated property, though it decreed a personal obligation, so far as order as to costs was concerned. This is a case in which a similar question arises, and I still adhere to the views expressed in that case. These views are in accord with those expressed by Mr. Justice West in the recent case of *Sheik Budan v. Ramchandra Bhunjaya* (1), and I am not prepared to alter the views which were adopted in the former ruling.

1887

PRAN KUMAR
v.
DURG
PRASAD.

Mr. *Kashi Prasad* in resisting the appeal argues that the first part of the decree declares the liability for the whole amount to be borne by the hypothecated property, and also personally by the judgment-debtor. For this contention he relies upon a Full Bench ruling of this Court in the case of *Debi Charan v. Pirbhudin Ram* (2). In regard to that ruling, all I need say for the purposes of this case is that the decree considered there was differently framed, and the ruling is inapplicable to the present case.

The interpretation of the decree, as I understand it, is that it limits the liability for the principal sum of the money claimed to the hypothecated property, but that the order as to costs is an order which could be executed to the extent of such costs against the judgment-debtor. I therefore decree the appeal, and, setting aside the order of the lower appellate Court, direct that the execution of the decree against the judgment-debtor-appellant personally be limited to the order as to costs which the decree contains; but as this view of the case was not taken by the Courts below, the proper course for me is to remand the case to the Court of first instance under s. 562 of the Civil Procedure Code for being dealt with according to law with reference to the observations I have made.

Costs will abide the result.

Cause remanded.

(1) I. L. R., 11 Bom. 537.

(2) I. L. R., 3 All. 388.