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that he should be misled by a person who believed that information to be false and was intending to mislead him. In this particular case, probably a sentence of two months' rigorous imprisonment and a fine of Rs. 300 will be sufficient to operate as a warning to others who may desire to give false information to public servants; and they may take this further warning that, if in future in similar cases the full penalty given under s. 182 is awarded, I shall hesitate before interfering with such a sentence. The application for revision to the extent of the punishment being reduced is allowed, otherwise it is rejected.

APPELLATE CIVIL.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

DURGA DAI (OPPOSITE PARTY) v. BHAGWAT PRASAD (PETITIONER).*

Execution of decree—Act IV of 1882 (Transfer of Property Act) s. 90—Nature of decree contemplated by that section.

The plaintiff obtained a decree on a hypothecation bond, the decree providing that the money secured by the bond was to be realised by sale of the hypothecated property, and, if that proved insufficient to satisfy the decree, by sale of other property of the judgment-debtor. The hypothecated property was sold and the proceeds were not sufficient to satisfy the decree. The decree-holder thereupon applied for enforcement of that portion of the decree which related to the other property of the judgment-debtor. To this application it was objected that it was necessary to obtain a decree under s. 90 of the Transfer of Property Act (IV of 1882). This objection was allowed and the decree-holder applied for and obtained a decree under the said section. The judgment-debtor then appealed against that decree on the ground, amongst others, that, looking to the terms of the original decree, the application under s. 90 was superfluous.

Held that the decree contemplated by s. 90 of the Transfer of Property Act is in fact an order to be obtained in execution of a decree for sale; and though in the present instance the application for such a decree may have been superfluous, it may nevertheless be regarded as an application for execution of a decree by enforcement of a portion of it against property other than the mortgaged property. *Miller v. Digambari Debya* (1) distinguished; *Hafiz-ud-din Ahmad v. Damodar Das* (2) and *Raj Singh v. Parmanand* (3) referred to.

*First Appeal No. 70 of 1890 from an order of Babu Brijpal Das, Subordinate Judge of Gorakhpur, dated the 11th January 1890.

(1) Weekly Notes 1890, p. 142. (2) Weekly Notes 1889, p. 149.

(3) I. L. R., 11 All, 486.

THE facts of this case sufficiently appear from the judgment of Straight, J.

Mr. *Abdul Raoof* and *Munshi Gobind Prasad*, for the appellant.

Mr. *J. E. Howard*, for the respondent.

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STRAIGHT, J. (TYRRELL, J. concurring). This is an execution first appeal from an order of the Subordinate Judge of Gorakhpur, dated the 11th January 1890. On the 19th August 1882, one Lala Kunjbehari, husband of Durga Dai, appellant, executed an hypothecation bond for Rs. 5,000 in favor of the respondent. On the 26th October 1887, the respondent obtained a decree against Durga Dai, her husband being then deceased, upon the bond for Rs. 7,205 principal and interest, with a direction contained therein that the decretal amount was to be realised by sale of the hypothecated property, and, in the event of that proving insufficient, by sale of other property of the deceased obligor. On the 8th May 1888, the first application for execution was made and it was confined to an application for sale of the mortgaged properties. Objections were taken by a third party, but they were disallowed, and subsequently, by an order of the 21st September 1888, the Court held that the decree-holder must obtain an order absolute for sale. On the 26th February 1889 an order absolute for sale having been obtained, a further application for execution was put in, and, as it appeared that the property sought to be sold was ancestral property, the execution was transferred to the Collector, who, on the 21st July 1889, sold the properties for Rs. 5,600, which amount was insufficient to satisfy the amount due under the mortgage. On the 23rd September 1889 the decree-holder asked the Court to enforce that part of the decree which provided that, in the event of the mortgaged property being insufficient, the decree might be executed against other property of the judgment-debtor, mortgagor, and he prayed for attachment and sale of 2 annas of mauza Pindra and 2 annas of Baikantpur. On the 25th November 1889, Durga Dai filed objections, the only material one of which was the following :—“That the property against which the decree was passed

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enforcing hypothecation has been sold. Now other property not hypothecated cannot be sold until a decree under s. 90 of Act IV of 1882 be obtained." This objection was allowed on the 14th December 1889. On the 19th December 1889 the decree-holder asked that the decree under s. 90 of Act IV of 1882, might be framed for the balance of the decretal money, and that such balance might be realised. On the 11th January 1890, the Subordinate Judge ordered that the decree-holder be empowered to proceed for Rs. 3,976 by attachment and sale of the other property of the judgment-debtor, and on the same day a decree was formally prepared in accordance with s. 90 of the Transfer of Property Act. It is this proceeding of the Subordinate Judge of the 11th January 1890, that is made the subject of this appeal, and the only point seriously argued before us was that, as the decree itself provided further sale of other property than the mortgaged property in the event of the mortgaged property proving insufficient, no decree under s. 90 was necessary. This contention comes with very bad grace from the judgment-debtor, who, on the 23rd November 1889, successfully objected to a then pending application for execution of the decree as it stood, upon the ground that a decree under s. 90 was necessary. No doubt the object of this was patent enough: the judgment-debtor wishes to clear out of the way the application of December 1889, in hopes of successfully hereafter contending that any subsequent application for execution is barred by limitation. In my opinion the decree mentioned in s. 90 of Act IV of 1882 is one that is given in the execution proceedings arising under a decree for sale upon a mortgage and stands upon the same footing as an order absolute for sale, which the Full Bench of the Court has held to be a proceeding in execution. Even if it be contended by the judgment-debtor that the application of the 19th December 1889 was superfluous, having regard to the terms of the decree, I am not prepared to say that it may not properly be treated and regarded as an application for execution of a decree by enforcement of a portion of it against property other than the mortgaged property. In the course of the argument of this case, a ruling of my

own was referred to in the case of *Miller v. Digambari Debya* (1). I pointed out to the learned pleader for the appellant the inapplicability of that ruling to the present suit. What was held there was that if a mortgagee comes into Court upon an instrument which contains not only ordinary mortgage terms in reference to the immovable property but a personal covenant upon the part of the mortgagor, and, as part of the relief he seeks, asks for a decree declaring his rights personally against the mortgagor, the Court should not refuse to grant that relief upon such grounds as were stated in that particular case. There are also two rulings to which reference was not directly made, but which have some bearing upon the present case and they are reported in the *Weekly Notes* for 1889, pages 149 and 191. The former was one of my own, which I referred to in the case reported in the *Weekly Notes* for 1890, page 142. The other is a ruling of the learned Chief Justice and my brother Tyrrell, and in none of these rulings is there anything in conflict with the view that I am now expressing that the decree contemplated in s. 90 of the Transfer of Property Act is in fact nothing more nor less than an order to be obtained in execution of a decree for sale, when, under that decree for sale, the sale has taken place and has proved insufficient to satisfy the mortgage debt. Even if the application in the present case of the 19th December 1889 were looked as strictly as it professes to be, *viz.*, for a decree under the terms of s. 90 of the Transfer of Property Act and for an order to attach and sell other properties of the judgment-debtor, I should not myself regard it as in any way invalidating or disturbing the legality or force of the decree itself as it originally stood.

In my opinion it would be a positive scandal to give effect to the contention now made, when it was by the action of the judgment-debtor herself that the order was made by which her objections succeeded on the 14th December 1889.

I dismiss the appeal with costs.

Appeal dismissed.

(1) *Weekly Notes* 1890, p. 142.

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