

would have taken place in the judgment-debtor's lifetime but for postponements made at his request, when, also at his request, the attachment continued in force.

I consider that the creditors had by these proceedings obtained rights over the judgment-debtor's interest which cannot be defeated by his death, and that the defect in the manner in which the attachment was made—the copy of the order not having been fixed up in the office of the Collector of the district in which the land is situate—will not make any difference. The defect might render the attachment ineffectual for the purpose of voiding alienations made, but the property was attached, and the attachment was expressly continued in force at the request of the judgment-debtor, who obtained repeated postponements of the sale; it was effectual against him, and the respondent cannot take hold of this defect so as to have the execution proceedings declared ineffectual.

I would decree the appeal, and set aside the order refusing execution, and remand the case for disposal. Costs to be costs in the cause.

MAHMOOD, J.—I concur.

Cause remanded.

Before Mr. Justice Oldfield and Mr. Justice Mahmood.

SITA RAM (OBJECTOR) v. BHAGWAN DAS (DECREE-HOLDER).*

*Civil Procedure Code, s. 244—Question for Court executing decree—Party to suit
—Representative.*

Where, certain property having been attached in execution of a decree, the representative of the judgment-debtor objected that the property had been acquired by himself and not inherited from the judgment-debtor, and was therefore not liable in execution,—held that the question was one which must be decided in the execution department under s 244 of the Civil Procedure Code. *Ram Ghulam v. Hazaru Koer* (1) referred to.

THE facts of this case are sufficiently stated in the judgment of Oldfield, J.

Mr. W. M. Colwin, Mr. N. L. Paliologus, Lala Jokhu Lal, Pandit Nand Lal, and Munshi Kashi Prasad, for the appellant.

The Senior Government Pleader (Lala Juala Prasad), for the respondent.

* First Appeal No. 128 of 1884, from an order of Babu Kashi Nath Biswas, Subordinate Judge of Benares, dated the 17th May, 1885.

(1) *Ante*, p. 547.

1885

RAI
BAKRISHEN
v.
RAI SITA
RAM.

1885

March 30.

1885

SITA RAM
v.
BHAGWAN
DAS.

OLDFIELD, J.—The question raised is, whether certain property which the decree-holder has attached in execution of a decree against Lachmi Chand, is liable to be attached and sold under the decree; the appellant, who is the representative of the judgment-debtor, having objected that the property was the self acquired property of himself, and not property inherited from the judgment-debtor, and therefore not liable in execution. This is a question which must be decided in the execution department under s. 244, Civil Procedure Code—*Ram Ghulam v. Hazaru Koer* (1) may be referred to—and the Court was in error to refuse to entertain and dispose of the objection. This order is set aside, and the case will be remanded for disposal. Costs to be costs in the cause.

MAHMOOD, J.—I concur.

Cause remanded.

Before Mr. Justice Oldfield and Mr. Justice Mahmood.

1885
March 30.

RAMESHAR SINGH (JUDGMENT-DEBTOR) v. BISHESHAR SINGH (DECREE-HOLDER). *

Abatement of appeal—Application for declaration of insolvency—Appeal from order rejecting application—Death of decree-holder-respondent—No application by appellant for substitution—Act XV of 1877 (Limitation Act), sch. ii, No. 171 B.—Civil Procedure Code, ss. 344-348, 350, 351, 368, 563, 582, 590.

The decree-holder respondent in an appeal from an order refusing an application by the judgment-debtor for declaration of insolvency under s. 344 of the Civil Procedure Code, died, and the judgment debtor appellant took no steps to have the legal representative of the deceased substituted as respondent in his place.

Held that art. 171 B, sch. ii, of the Limitation Act (XV of 1877) applied to the case, and that, as no one had been brought on the record to represent the deceased respondent within the period prescribed, the appeal must abate.

Per MAHMOOD, J., that, whatever the position of the parties might have been in the regular suit, in the insolvency proceedings the judgment-debtor occupied a position analogous to that of a plaintiff, and the decree-holder occupied the position of a defendant.

Narcin Das v. Lajja Ram (2), distinguished.

THIS was an appeal from an order of the District Judge of Benares, dated the 17th May, 1884, refusing an application under s. 344 of the Civil Procedure Code, for declaration of insolvency.

* First Appeal No. 87 of 1884, from an order of D. M. Gardener, Esq., District Judge of Benares, dated the 17th May, 1884.

(1) *Ante*, p. 547.

(2) *Ante* p. 692.