

*Before Mr. Justice Field and Mr. Justice O'Kinealy.*

HALODHAR SHAHA AND OTHERS (SOME OF THE PLAINTIFFS) *v.* HARO-  
GOBIND DAS KOIBURTO AND ANOTHER (TWO OF THE DEFENDANTS).<sup>o</sup>

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June 4.

*Civil Procedure Code, 1882, ss. 232 and 244—Execution of decrees—Assignees of decrees—Regular suit—Questions for Court executing decrees.*

Three out of six decree-holders sold their share in the decree to *A*, who thereafter made an application to the Court under s. 232 of the Code of Civil Procedure. This application was dismissed on the ground that *A*'s purchase was made *benami* for some of the judgment-debtors. In a subsequent suit, brought by *A* and the persons who were said to be the real purchasers, it was contended that a separate suit was barred under the provisions of s. 244, cl. (c) of the Code of Civil Procedure.

*Held*, that *A* was not a party to the suit in which the decree was passed, nor the representative of any such party, and that the suit was not barred.

In this case the defendants were owners of 16 annas of a zemindari in which the 4th and 5th plaintiffs, with others hereafter called talukdars, held a taluk. The defendants Nos. 1, 2, 3, held a six annas share of the zemindari, the defendants Nos. 4, 5 and 6 held the remaining ten annas share.

In 1876 and 1877 the defendants obtained four decrees for arrears of rent against the talukdars, and on the 28th of February 1878, the defendants Nos. 4, 5 and 6 sold their share of the rent decrees to the plaintiffs Nos. 1, 2 and 3. It was found by the Court of first instance in the present case, and this finding was accepted by the lower Appellate Court, that that sale was made *benami* for the plaintiffs Nos. 4 and 5, two of the talukdars against whom the decrees had been obtained. Applications were then made by the plaintiff No. 1, supported by the defendants Nos. 4, 5 and 6, for the substitution of his name on the records of the four rent suits instead of the names of the defendants Nos. 4, 5, and 6; but these applications were disallowed.

In the early part of the year 1880 the defendants Nos. 1, 2, 3, took out execution of the rent decrees and attached certain properties

<sup>o</sup>Appeal from Appellate Decree No. 274 of 1884, against the decree of Baboo Beni Madhav Mitter, Subordinate Judge of Tipperah, dated the 17th December 1883, reversing the decree of Baboo Nil Madhav De, Second Munsiff of Bramonberiah, dated the 30th of September 1882.

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of the plaintiffs Nos. 4 and 5. These latter, in order to save their properties from sale, deposited in Court a sum of Rs. 1,306-13-9. On the 23rd of December 1878, the defendant No. 1, in execution of a decree obtained by him, bought the ten annas share of the rent decrees, and thereafter the defendants Nos. 1, 2, 3, applied for payment out to them of the sum of Rs. 1,306-3-9 abovementioned. The present suit was brought to recover a ten annas share of the Rs. 1,306-13-9, and a further sum of over Rs. 222 afterwards deposited in the execution proceedings by the plaintiffs Nos. 4 and 5, making in all the sum of Rs. 1,039-10-11. The Court of first instance decreed the plaintiff's claim, but this decision was reversed on appeal and the suit dismissed, on the ground that the Civil Courts were prohibited from entertaining it by the provisions of s. 244 of the Civil Procedure Code. The plaintiff appealed to the High Court.

Baboo *Trailokho Nath Mitter*, for the appellants.

Baboo *Kali Mohun Dass*, for the respondents.

The judgment of the Court (FIELD and O'KINEALY, JJ.) was delivered by

FIELD, J.—The facts of the case are somewhat complicated, but the real question which we have to decide upon this appeal is a sufficiently simple one. Defendants Nos. 1 to 3 and 4 to 6 jointly obtained four rent decrees against Halodhar, Monmohini and others. The interest of defendants 1 to 3 was that of 6 annas, and that of 4 to 6 was ten annas. Rashoraj Shaha, plaintiff No. 1, in the present case, purchased the ten annas interest in the decrees of defendants Nos. 4 to 6, and he applied under the provisions of s. 232 of the Civil Procedure Code to have his name put upon the record, and to execute the decree. That application was refused under the provisions of cl. (b), s. 232, it being found that Rashoraj was merely a *benami* purchaser on behalf of Halodhar and Monmohini, two of the judgment-debtors under the decree. Subsequently defendant No. 1, or defendants Nos. 1 to 3, as has been otherwise stated, obtained a money-decree, on the 6th March 1878, against defendants Nos. 4 to 6, that is, the owners of the ten annas interest; and in execution of that money-decree defen-

dant No. 1 or defendants Nos. 1 to 3 brought to sale and himself or themselves purchased the ten annas interest in the rent decrees belonging to defendants Nos. 4 to 6. Thereupon the defendant No. 1 executed the rent decree and realized the amount due thereunder. Halodhar and Monmohini having had to pay some Rs. 1,500 odd, the present suit is instituted by Halodhar, Monmohini, Rashoraj, a *benami* purchaser, and other persons said to have an interest, in order to recover the sum of Rs. 1,500 odd, which was thus realized from Halodhar and Monmohini. The Subordinate Judge has held that the suit is not maintainable, being barred by the decision of the question under s. 232; and that it was barred by reason of the provisions of clause (c) of s. 244 of the Code of Civil Procedure. What is now to be decided is, whether the question determined in the proceeding under s. 232 was decided between the parties to the suit, or their representatives. Obviously it was not decided between the parties to the suit, because Rashoraj was no party; and we think also that it is impossible to say that the question was decided between the representatives of the parties to the suit. Rashoraj had, indeed, purchased the interest of the ten annas decree-holders, but inasmuch as his application under s. 232 of the Code of Civil Procedure was refused and his name not put upon the record, we think it impossible to say that he ever became a representative of any party to the suit, within the meaning of clause (c) of s. 244. We think, therefore, that the Subordinate Judge was in error in holding that the present suit is barred by the former proceeding.

We, therefore, reverse the decree of the lower Appellate Court, and remand the case to him for trial upon the merits.

Costs to abide the result.

*Appeal allowed and case remanded.*

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