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of the decree and not for costs, and no separate proceedings having taken place in respect of the personal decree against the judgment-debtor, the sale was valid, or *ab initio* void, or voidable, or ineffectual to convey any proprietary rights to the auction-purchaser-appellant. Now I am anxious to say that I am not prepared to lay down that the method adopted by the decree-holder was necessarily regular or proper for the purpose of executing a decree of this nature. But all that is said against the attachment, against the notification of sale, and against the sale itself, constitutes matters falling under s. 312 of the Civil Procedure Code, which enables parties to object to confirmation of sale. And therefore, even assuming for the purposes of argument that the sale and the confirmation of sale were subject to the objection of "material irregularity in publishing or conducting" the sale, within the meaning of s. 311, I should still say that a suit like the present, upon that ground alone, is prohibited by the last part of s. 312. Upon these grounds—the only grounds that can be taken on behalf of the plaintiff-respondent—I am of opinion that this suit should have been dismissed. I therefore concur in the order proposed by my learned brother Oldfield.

*Appeal allowed.*

*Before Mr. Justice Oldfield and Mr. Justice Mahmood.*

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BARI BAHU AND ANOTHER (DEFENDANTS) v. GULAB CHAND (PLAINTIFF.)\*

*Mortgage—Annulment of settlement—Fresh settlement—Act XIX of 1873  
(Land-Revenue Act), ss. 43, 159, 165.*

A settlement of land belonging to G, and which he had mortgaged, having been annulled under s. 158 of the N.-W. P. Land-Revenue Act (XIX of 1873), the land was farmed by the Collector of the District under s. 159. The revenue having fallen into arrears, the Collector, under the same section, took the land under his own management. Subsequently, under ss. 165 and 43 of the Act, the land was settled with G's wife.

*Held* that the Court was precluded by the terms of s. 241 (f) of the Revenue Act from entering into the question whether the settlement was legally made by the Collector with the wife of the mortgagor; that she must therefore be taken to represent such rights and interests as the mortgagor possessed; and that consequently the estate was liable in her hands for the mortgage, and the mortgagee was entitled to claim foreclosure against her.

\* Second Appeal No. 19 of 1884, from a decree of J. M. C. Steinbelt, Esq., District Judge of Banda, dated the 3rd October, 1883, modifying a decree of Munshi Manmohan Lal, Subordinate Judge of Banda, dated the 6th July, 1883.

The facts of this case are sufficiently stated for the purposes of this report in the judgment of Oldfield, J.

Babu *Baroda Prasad Ghose*, for the appellant.

The *Junior Government Pleader* (Babu *Divarka Nath Banarji*) and Pandit *Ajudhia Nath*, for the respondent.

OLDFIELD, J.—The plaintiff holds a mortgage with conditional sale from Gurdoyal of his one-third share in mauza Dharwan and has brought this suit for foreclosure. It appears that Gurdoyal and the shareholders of the other two-thirds of the mauza fell into arrears of revenue, and the Government annulled the settlement under s. 158, Revenue Act, and under s. 159 farmed the mauza to the plaintiff. The plaintiff also appears to have fallen into arrears of revenue, and the Collector, also acting under s. 159, took the mauza under his management. Eventually, as the arrears could not be cleared off by *kham* management, the one-third share of Gurdoyal was, under the provisions of ss. 165 and 43, Revenue Act, offered to defendant Bari Bahu, wife of Gurdoyal, as representing him. He, it appears, had become a *bairagi*. She satisfied the arrears due, Rs. 908-6-11, and a fresh settlement was made with her. The claim of the plaintiff to foreclose has been resisted by her on the ground that the estate is not liable in her hands for the mortgage made by Gurdoyal. Both Courts decreed the claim, and the same plea is now raised in second appeal before us, and is the only ground pressed in appeal.

The plea is invalid. There is no doubt that under s. 159, Revenue Act, so long as a farm or *kham* management continues as to land the settlement of which has been annulled, all contracts made by the persons who immediately before the annulment of the settlement were in possession of the land comprised therein, relating to such lands, are during the term of farm or *kham* management not binding on the Collector of the District, or his agent or lessee; but in the present case the term of farm and *kham* management ceased, and Bari Bahu, the defendant, was put into possession, not as farmer, but as a proprietor with whom a fresh settlement has been made under ss. 165 and 43; and there is nothing in the law by which the contracts made by her predecessor, Gurdoyal, are not binding on her, just as they would be on him. The fact that she paid off revenue, or that the original settlement was

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cancelled and a new one made with her for the period of the current settlement, does not relieve her from the obligations of contracts made by her predecessor in title. In this case, if the plaintiff is responsible for any of the arrears which she has satisfied, she may possibly have a claim against him on that account; but on that point I express no opinion; but she cannot be relieved of the obligation created by the mortgage made by Gurdayal. Whether or not the settlement should have been made with Gurdayal under s. 43 rather than with Bari Bahu does not affect the question before us. She was treated as proprietor, or as representing Gurdayal as his heir, who had by becoming a *bairagi* disassociated himself from affairs, and was treated as civilly dead; and in either case the estate in her hands is liable for the mortgage made by Gurdayal. The appeal is dismissed with costs.

MAHMOOD, J.—I am of the same opinion; but as in the course of argument I expressed some doubt as to the view which my brother Oldfield and I now take, I wish to add a few words. It appears that the whole question now is, whether the plaintiff, as holder of a mortgage from Gurdayal, can enforce it in this suit as against Bari Bahu, who is admittedly in possession of the property mortgaged through an arrangement made between her and the Collector of the district in which the property is situated. The question seems to depend upon our knowing the exact legal *status* of this lady in regard to this estate. Having carefully examined the original record of the proceedings by the Collector, after Gurdayal fell into arrears of Government revenue, I have arrived at the same conclusion as my learned brother Oldfield, namely, that his action must be regarded as having been taken in accordance with s. 165 of the Land-Revenue Act (XIX of 1873), read with s. 43 of the same Act. Of course action so taken was one of the measures for which the Legislature provided in s. 150 of the Act, and my difficulty at the hearing was whether the Collector's action, in settling the estate with Bari Bahu, was legal. I still entertain considerable doubt, because I am inclined to think that s. 165 of the Revenue Act, read with s. 43, enables the Collector to settle land only with the *proprietor*, that term being by ordinary rules of construction understood as including those who represent him in title. Of course, the case of a mortgage or conditional vendee

—the other persons with whom a settlement may be made,—does not arise here. But this doubt is not a matter with which we are concerned.

It may be that Gurdayal being admittedly still alive, the action of the revenue authorities in treating him as if he was dead and in settling the property with his wife, was illegal. But in this case we are dealing with the matter as a Civil Court, and I therefore agree with my brother Oldfield in holding that the question cannot be adjudicated on by us so far as regards the validity of the settlement made by the Collector. By reason of cl. (b) of s. 241 of the Revenue Act, we have no jurisdiction to enter into the merits of the matter, and therefore we must take it that the wife does now represent such rights and interests as Gurdayal possessed, and, in consequence, he is virtually bound by such contracts regarding the property as he made. It is unnecessary for me to remark as to the effect of the circumstance that Gurdayal himself is one of the defendants in the present suit. For these reasons I concur in the order proposed by my brother Oldfield.

*Appeal dismissed.*

*Before Mr. Justice Oldfield and Mr. Justice Mahmood.*

RAM BAKSHI (PLAINTIFF) v. PANNA LAL AND ANOTHER (DEFENDANTS)\*.

*Execution of decree—Application of transferee of decree for execution disallowed—  
Suit by transferee for decretal amount—Declaratory decree—Civil Procedure Code,  
ss. 232, 244.*

The transferee of a decree for costs, associating with him the transferor, made an application under s. 232 of the Civil Procedure Code, to be allowed to execute the decree. The application was opposed by the judgment-debtor, and was rejected, and the Court referred the transferee to a regular suit. After taking various proceedings ineffectually, he instituted a suit for the recovery of the sum to which he was entitled as costs under the decree transferred to him.

*Held* that the plaintiff, as the holder of the decree by assignment, could only recover the amount under it by executing the decree, and not by a separate suit; but that he was entitled to have a decree declaring that the assignment to him of the decree-holder's rights under the decree was valid, and gave him a right to execute it, and that the Court's order under s. 232 which disallowed the execution was an improper one, a suit for this relief being maintainable, for, there being no appeal from orders under s. 232, there would otherwise be no remedy; and that, looking at the plaint and the issues on which the parties were divided, and the

\* Second Appeal No. 1682 of 1883, from a decree of Babu Pramoda Charan Banarji, Judge of the Court of Small Causes at Agra, with powers of a Subordinate Judge, dated the 30th June, 1883, reversing a decree of Maulvi Muhammad Fida Husain, Munsif of Agra, dated the 13th December, 1882.

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