

1884

QUEEN-
EMPRESS
v.
DUNGAR
SINGH.

of the Judges of this Court ever since Act X of 1882 came into force. It is also, in my opinion, in conformity with the law, and is otherwise unobjectionable. I therefore decline to interfere, and I reject the application.

Application rejected.

APPELLATE CIVIL.

Before Mr. Justice Mahmood and Mr. Justice Duttoit.

NATH MAL DAS AND OTHERS (DEFENDANTS) v. TAJ AMMUL HUSAIN
(PLAINTIFF). *

Civil Procedure Code, s. 244—Question for Court executing decree—Plaintiff suing in a character separate from that in which decree was passed against him—Separate suit not barred.

A judgment-debtor, upon the attachment of certain land in execution of decrees passed against him personally by the Revenue Court, instituted a suit for a declaration and establishment of his right to such land, not as his own property but as *wakf*, of which he was *mutawalli* or trustee.

Held that inasmuch as the plaintiff was not suing in his own right, but in his capacity as custodian, trustee, or manager of the *wakf* property, and he must therefore be taken to fill a character separate from that in which the decrees were passed against him by the Revenue Court, his suit was not barred by the provisions of s. 244 of the Civil Procedure Code. *Madho Prakash Singh v. Murli Manohar* (1) and *Shankar Dial v. Amir Haidar* (2) referred to.

The appellants, in execution of decrees passed by the Revenue Court against the respondents personally, attached certain land. The respondent objected on the ground that the land was not liable to attachment, as it was *wakf* under his father's will. The objection was disallowed by the Revenue Court, presumably under s. 179 of the N.-W. P. Rent Act (XII of 1881), on the 4th of June, 1883. The present suit for a declaration and establishment of right to the land in question was subsequently instituted by the respondent, not in his own right, but as *mutawalli* or trustee of the *wakf* property.

The Court of first instance (Subordinate Judge) decreed the claim on the ground that the property was the subject of *wakf*, and therefore not liable to attachment or sale in execution of a decree against the plaintiff personally.

* First Appeal No. 16 of 1884, from a decree of Maulvi Nasir Ali Khan, Subordinate Judge of Moradabad, dated the 14th September, 1883.

(1) I. L. R., 5 All. 406.

(2) I. L. R., 2 All. 752.

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On appeal to the High Court, it was contended, *inter alia*, that this being a question arising between the parties to the suit in which the original decree was passed, and relating to the execution of the decree, it should, with reference to s. 244 of the Civil Procedure Code, be settled in the execution department, and not by a separate suit.

Munshi *Hanuman Prasad* and Lala *Harkishen Das*, for the appellants.

Mr. *Amir-ud-din* and Babu *Baroda Prasad*, for the respondent.

The Court (MAHMOOD and DUTHOIT, JJ.) delivered the following judgment:—

MAHMOOD, J.—In the appeal before us, the learned pleader for the appellants has laid the greatest stress on the contention that the suit was not maintainable by the plaintiff, as he was the judgment-debtor of the decrees in execution whereof the property was attached. For this contention, s. 244 of the Civil Procedure Code is relied upon, on the ground that the Courts of Revenue, in those matters of procedure on which the Rent Act is silent, have been held by a Full Bench of this Court in *Madho Prakash Singh v. Murli Manohar* 1) to be governed by the principles of the Civil Procedure Code.

We are, however, of opinion that the suit was maintainable. The plaintiff in this suit is not suing in his own right, but in his capacity as custodian, trustee, or manager of the *wakf* property, and he must therefore be taken to fill a character separate from that in which the decrees were passed against him by the Revenue Court. S. 244 of the Civil Procedure Code does not, therefore, bar the present suit, and the view which we have taken is supported by the principle laid down in *Shankar Dial v. Amir Haidar* (2) and in the cases there cited. The legal objection therefore has no force.

(The Court proceeded to consider the findings of the Court of first instance upon the merits, and, holding that no grounds for disturbing these findings had been established, dismissed the appeal with costs.)

Appeal dismissed.

(1) I. L. R., 5 All. 406.

(2) I. L. R., 2 All. 752.