

ment, but he added to the sentence a sentence of a fine of ten rupees, or in default six weeks' rigorous imprisonment. The result might be that, if the ten rupees were not paid, each of these men would have to undergo practically four months and two weeks' rigorous imprisonment instead of four months' rigorous imprisonment for the offence, under s. 342. We set aside so much of the orders of the District Magistrate as related to the fines, and the fines, if paid, must be returned at once.

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December 11.

Before Sir John Edge, Kt., Chief Justice and Mr. Justice Banerji.

DWARKA DAS (PLAINTIFF) v. KAMESHAR PRASAD AND ANOTHER
(DEFENDANTS.)*

Civil Procedure Code, s. 283 - Jurisdiction—Valuation of suits - Act No. XII of 1887 (Bengal, &c., Civil Courts Act) ss. 19, 21—Act No. 1 of 1887 (General Clauses Act) s. 3, cl. (13).

When the only parties to a suit under s. 283 of Act No. XIV of 1882 are the execution-creditor or his representative on one side, as plaintiff or as defendant, and the claimant-objector or his representative on the other, and the sole question in the suit between such parties is the question whether the property attached in execution of the decree of the execution-creditor is or is not liable to be attached and sold in execution of the decree of the execution-creditor, the value of the suit, within the meaning of ss. 19 and 21 of Act No. XII of 1887, which, by cl. (13) of s. 3 of Act No. I of 1887, means "the amount or value of the subject matter of the suit," is the value of the property sought to be sold in execution of the decree, when the amount of the decree exceeds the value of the property, and the value of so much of the property sought to be sold as will on a sale satisfy the amount sought to be realized by the sale, when the value of the property attached exceeds the amount sought to be realized, and that in such latter case the amount which it is sought to realise by a sale under the decree may be taken as the value of that portion of the property the sale of which will theoretically, although possibly not in practice, be sufficient to satisfy the amount sought to be realised by a sale.

But when in a suit under s. 283 of Act No. XIV of 1882 the claimant-objector makes the judgment-debtor or his representative party as defendant to the suit, the property attached must be regarded as the subject matter of the suit, and the value of the suit, within the meaning of ss. 19 and 21 of Act No. XII of 1887

* First Appeal No. 291 of 1893, from a decree of Babu Nilmadhub Rai, Subordinate Judge of Benares, dated the 14th March 1893.

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must be the value of the property attached, whether such value exceeds or is less than the amount which is sought to be realized by the sale of the property in execution of the decree.

Gulzari Lal v. Jadaun Rai (1), *Durga Prasad v. Rachla Kuar* (2), *Krishnama Chariar v. Srinivasa Ayyingar* (3), and *Modhusudun Koer v. Rakhal Chunder Roy*, (4), distinguished. *Mahabir Singh v. Behari Lal* (5) and *Madho Das v. Ramji Patik* (6) referred to.

The facts of this case are fully stated in the judgment of the Court.

Munshi *Madho Prasad*, for the appellant.

Babu *Jogindro Nath Chaudhri*, for the respondents.

EDGE, C. J. and BANERJI, J.—This is an appeal brought by Babu Dwarka Das, the plaintiff in the suit, from the decree of the Subordinate Judge of Benares dismissing the suit with costs.

The memorandum of appeal had been originally presented to the Court of the District Judge of Benares. The District Judge returned the memorandum of appeal to the plaintiff for presentation to this Court, holding that the appeal lay to this Court and not to the Court of the District Judge. The plaintiff thereupon presented the memorandum of appeal to this Court; the memorandum of appeal was admitted and the appeal was registered under section 548 of Act No. XIV of 1882.

Upon the appeal being called on for hearing, Mr. *Madho Prasad*, vakil for the appellant, contended that the appeal lay to the Court of the District Judge, and not to this Court, and that we should return the memorandum of appeal to the appellant for presentation by him to the Court of the District Judge of Benares. On the other hand Mr. *Jogindro Nath Chaudhri*, for the respondent, contended that the appeal lay to this Court.

The facts material to the question of jurisdiction are as follows:—

The respondent Babu Kameshar Prasad had obtained, on the 20th of August 1881, in the Court of the Subordinate Judge of

(1) I. L. R., 2 All., 799.

(2) I. L. R., 9 All., 140.

(3) I. L. R., 4 Mad., 339.

(4) I. L. R., 15 Calc., 104.

(5) I. L. R., 13 All., 320.

(6) I. L. R., 16 All., 286.

Benares a decree for money against Puran Chand, [since deceased, and Daru Mal, and in execution of that decree [he obtained, on the 13th of December 1889, attachment of [a house and a bungalow, which, he alleged, had been the property of Puran Chand in his lifetime and were, according to him, then in the possession of [the respondent Sahudra Bibi as the representative of Puran Chand. Babu Dwarka Das filed an objection to the attachment alleging that the property was his, and was not liable to be attached and sold in execution of the decree of Babu Kameshar Prasad.

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The Subordinate Judge disallowed the claim of Babu Dwarka Das, and thereupon Babu Dwarka Das, under section 233 of Act No. XIV of 1882, brought the suit in which this appeal has arisen, making Babu Kameshar Prasad, as the execution creditor, and Musammat Sahudra Bibi, as the representative of Puran Chand, deceased, defendants.

In his plaint Babu Dwarka Das alleged that, by a registered sale-deed made by Puran Chand on the 22nd of March 1882, Puran Chand had sold the house and bungalow in question to him for the price of Rs. 7,500 and that he, the plaintiff, having paid the entire purchase money, got proprietary possession of the house and bungalow and still held the house and the bungalow as his property. He stated the fact that Babu Kameshar Prasad had obtained the decree under which the property was attached, the fact of the attachment, of his objection and of the disallowance of his objection, and prayed that :—

“(1) It may be declared by the Court that by virtue of the aforesaid purchase the plaintiff is the owner and in possession of the brick and stone-built house consisting of four sections, and the bungalow built after English fashion, both the land and the building, situate in mohalla Nilkanth Mahadeo in the city of Benares, bounded as below, and that the property is not attachable or saleable in execution of the said decree. Value of suit Rs. 7,500.

“(2) The costs of the suit may be charged against the defendants with future interest.”

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The plaintiff sought two substantial declarations within the ruling in *Moti Singh v. Kaunsilla* (1), the latter of which, on the facts alleged in the plaint, necessarily involved the former, although the former did not necessarily involve the latter.

The defendant, Musammatt Sahudra Bibi, did not defend the suit. The other defendant, Babu Kameshar Prasad, filed a written statement and defended the suit. In the written statement he alleged, amongst other things, that the whole proceedings "connected with the sale-deed in question, dated the 22nd of March 1882, are fictitious. The sale-deed in question was not intended to transfer any property, nor was any property transferred by it to the plaintiff. It was executed and completed without any consideration with a view to protect the property of the deceased debtor Puran Chand *alias* Raja."

In support of the contention that this appeal lay to the Court of the District Judge—Mr. *Madho Prasad* for the plaintiff appellant relied upon *Gulzari Lal v. Jadaun Rai*, (2) *Durga Prasad v. Rachla Kuar* (3), *Krishna ma Chariar v. Srinivasa Ayyangar* (4), *Modhusudun Koer v. Rakhal Chunder Roy* (5) and *Daya Chand Nem Chand v. Hem Chand Dharam Chand* (6).

Mr. *Jogindro Nath Chaudhri*, for the defendant respondent, Babu Kameshar Prasad, in support of the contention that the appeal lay to this Court relied upon *Mahabir Singh v. Behari Lal* (7) and *Madho Das v. Ramji Patak* (8).

It appears to us that the decision in *Daya Chand Nem Chand v. Hem Chand Dharam Chand* (6) has little or no bearing on the question which we have to decide.

In *Gulzari Lal v. Jadaun Rai* (2) (the decision in which was explained in the case to which we shall next refer), *Durga Prasad v. Rachla Kuar* (3), *Krishnama Chariar v. Srinivasa Ayyangar* (4) and *Modhusudun Koer v. Rakhal Chunder Roy* (5) the suits, so far as we can gather from the reports, were either solely between

(1) I. L. R., 16 All., 308.

(2) I. L. R., 2 All., 799.

(3) I. L. R., 9 All., 140.

(4) I. L. R., 4 Mad., 839

(5) I. L. R., 15 Calc., 104.

(6) I. L. R., 4 Bom., 515.

(7) I. L. R., 13 All., 320.

(8) I. L. R., 16 All., 286.

the execution-creditor and the claimant-objector on one side or the other, or, if the judgment-debtor was a party as defendant, the effect upon his title and that of all claiming through him of a decision in the suit that the property was not liable to the attachment of the execution-creditor was not raised or considered.

It appears to us that when the only parties to a suit under s. 283 of Act No. XIV of 1882 are the execution-creditor or his representative on one side, as plaintiff or as defendant, and the claimant-objector or his representative on the other, and the sole question in the suit between such parties is the question whether the property attached in execution of the decree of the execution-creditor is or is not liable to be attached and sold in execution of the decree of the execution-creditor, the value of the suit, within the meaning of ss. 19 and 21 of Act No. XII of 1887, which, by cl. (13) of s. 3 of Act No. I of 1887, means "the amount or value of the subject matter of the suit," is the value of the property sought to be sold in execution of the decree, when the amount of the decree exceeds the value of the property, and the value of so much of the property sought to be sold as will on a sale satisfy the amount sought to be realized by the sale, when the value of the property attached exceeds the amount sought to be realized, and that in such latter case the amount which it is sought to realise by a sale under the decree may be taken as the value of that portion of the property the sale of which will theoretically, although possibly not in practice, be sufficient to satisfy the amount sought to be realised by a sale. To that extent we are of opinion that the rule deducible from the cases reported in I. L. R., 2 All. 799, I. L. R., 9 All. 140, I. L. R., 4 Mad. 339 and I. L. R., 15 Calc. 104 is correct, when the array of parties is confined to the execution-creditor or his representative on one side and the claimant-objector or his representative on the other, and the sole question to be decided is whether the property is liable to attachment and sale in execution of the decree of the execution-creditor.

In our opinion different considerations arise, which must be considered and given effect to, when in a suit under s. 283 of Act

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No. XIV of 1882 the judgment-debtor or his representative is made a party as a defendant to the suit, and it is necessary to decide the question of jurisdiction as to the Court in which the suit or an appeal in the suit may be brought.

In a suit under s. 283 of the Act No. XIV of 1882 in which the claimant-objector is the plaintiff and the execution-creditor is the defendant, and in which the judgment-debtor is not party as a defendant, the questions as to the title of the judgment-debtor which it may be necessary to decide are decided solely between the parties to the suit, and a decision of or involving those questions of title would not operate as *res judicata* under s. 13 of Act No. XIV of 1882, should the same title be in issue in any subsequent suit between either of the persons who was a party to the suit under s. 283 and the person who was the judgment-debtor in the proceedings to which the suit under s. 283 related, or those who claimed title through them respectively.

On the other hand, when the claimant-objector makes the judgment-debtor a defendant to his suit under s. 283, and does not limit his claim, he claims both in form and substance against the judgment-debtor a declaration of his title to the whole of the property the title to which is in issue in the suit. A decree in such a suit declaring that the property is liable or is not liable to attachment and sale in execution of the execution-creditor's decree must necessarily, unless the suit be decided on a ground which did not involve the decision of a question of title, decide and determine all questions of title upon which in that suit the plaintiff on the one side and the judgment-debtor on the other could then rely, and such decision would operate in any future suit between these two parties or those who claim title through them as *res judicata* under s. 13 of Act No. XIV of 1882 on those questions of title, although such subsequent suit might relate to property not in question in the suit under s. 283, provided that the Court in which the suit under s. 283 was instituted and decided was a Court of jurisdiction competent to try the subsequent suit. The present suit will illustrate our meaning. The plaintiff claims a declaration that the house and

bungalow in question are not liable to attachment and sale in execution of Babu Kameshar Prasad's decree. The other declaration which is claimed by the plaintiff, namely, that the house and bungalow became vested in him by the alleged sale-deed of the 2nd of March 1882, is necessarily involved in the declaration that the house and bungalow are not liable to be attached and sold, as it appears that upon that sale-deed of the 2nd of March 1882 the plaintiff relies for his title and the right to a declaration that the property is not liable to attachment and sale in execution of Babu Kameshar Prasad's decree. A decree that the property was not liable to such attachment and sale would necessarily involve, there being no question of estoppel or limitation, the decision, on the question of title, that the sale-deed was a fictitious instrument under which no title passed from Puran Chand to the plaintiff, or that it was a genuine sale-deed effecting a genuine and unimpeachable transaction of sale, and by which title passed from Puran Chand to the plaintiff. The representative of the deceased Puran Chand being a defendant to this suit, and having regard to the jurisdiction of the Court in which the suit has been brought, a decree declaring that the property was not liable to attachment and sale in execution of Babu Kameshar Prasad's decree would, in any subsequent suit between the present plaintiff or anyone claiming through him on the one side and Musammat Sahudra Bibi or anyone claiming through her on her title derived from Puran Chand on the other, preclude Musammat Sahudra Bibi and all those claiming through her or her title as the representative of Puran Chand from disputing the validity and effect in passing title of the sale-deed; but it is to be observed that the plaintiff might be entitled to such a declaration as against Musammat Sahudra Bibi, although facts might possibly be proved which would estop the plaintiff from alleging as against Babu Kameshar Prasad that the property attached was not liable to attachment and sale in execution of Babu Kameshar Prasad's decree.

We are consequently of opinion that when in a suit under s. 283 of Act No. XIV of 1882 the claimant-objector makes the judgment-debtor or his representative a party as defendant to the

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suit, the property attached must be regarded as the subject matter of the suit, and the value of the suit within the meaning of s. 19 and s. 21 of Act No. XII of 1887 must be the value of the property attached, whether such value exceeds or is less than the amount which is sought to be realised by the sale of the property in execution of the decree.

The opinions which we have above expressed in no way conflict with the decisions in *Mahabir Singh, v. Behari Lal*, (1) and *Madho Das v. Ramji Patak* (2). We have indicated what, in our opinion, is, for the purposes of jurisdiction, the value of a suit under sec. 283 of Act No. XIV of 1882, when the judgment-debtor or his representative is made, and when he is not made, a party to the suit as a defendant. In either case the value of the suit for the purpose of jurisdiction is the value stated by the plaintiff in his plaint, provided that such value is not understated or overstated with the object of getting the suit admitted in a Court in which, by reason of the true value of the suit and s. 15 of Act No. XIV of 1882, the suit does not lie. In the present case, assuming, and it is not disputed, that Rs. 7,500 is the value of the property, this appeal lay to this Court and not to the Court of the District Judge.

At the conclusion of the arguments on the question of jurisdiction we asked Mr. *Madho Prasad*, to support his client's appeal on the merits, and he admitted that he could not do so. Under the circumstances it is not necessary for us to express any opinion as to whether or not the plaint disclosed any cause of action against Musammat Sahudra Bibi. We presume that the object of Mr. *Madho Prasad* in raising the question of jurisdiction and asking us to return the memorandum of appeal to his client was to avoid the appeal being dismissed with costs; and to enable his client to escape paying the costs of an appeal which could not be supported. It may be assumed, as the appeal cannot be supported on the merits, that the memorandum of appeal, if returned by this Court, would not be again presented to the Court of the District Judge.

We dismiss the appeal with costs.

Appeal dismissed.

(1) I. L. R., 13 All. 320.

(2) I. L. R., 16 All. 286.