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get a decree on a different cause of action from that alleged by him, and a cause of action which he has repudiated in the Court of first instance and in the Court of first appeal, and only relies on as an off-chance in the Court of second appeal. I would dismiss this appeal with costs.

BLANNERHASSETT, J.—I concur.

Appeal dismissed.

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May 30.

Before Mr. Justice Blair and Mr. Justice Banerji.

SUNDAR SINGH AND OTHERS (PLAINTIFFS) v. GHASI AND OTHERS (DEFENDANTS).*

Civil Procedure Code, sections 278, 283—Execution of decree—Application in execution department—Separate suit—Remedy under section 283 not excluded by previous application under section 278.

The provisions of section 278 of the Code of Civil Procedure and the sections immediately succeeding are not exclusive of the remedy by suit. *Man Kuar v. Tara Singh* (1) considered.

THIS was a suit brought by Sundar Singh and others, who claimed to be owners of a certain zamindari share, for a declaration that such property, which had been attached by one Ram Dayal as the property of Ghasi and others his judgment-debtors, was not liable to attachment and sale in execution of Ram Dayal's decree. The decree-holder, the judgment debtors and certain other co-sharers in the village in which the property in suit was situated were made defendants.

The decree-holder and the judgment-debtors each filed a similar defence to the suit, that the share in question was owned and possessed by the judgment-debtors and had never been in the possession of the plaintiff.

The court of first instance (Munsif of Etawah) found twelve years' adverse possession in favour of the plaintiff, and decreed the claim for removal of the attachment.

* Second Appeal No. 420 of 1894, from a decree of Syed Siraj-ud-din, Additional Subordinate Judge of Mainpuri, dated the 7th March 1894, reversing a decree of Babu Madho Das, Munsif of Etawah, dated the 15th December 1892.

The judgment-debtors appealed, and, as their principal ground of appeal, pleaded that the plaintiff's claim was bad, inasmuch as he had not taken objection to the attachment under section 278 of the Code of Civil Procedure.

The lower appellate Court (Additional Subordinate Judge of Mainpuri), on the issue raised by the above-mentioned ground of appeal, decreed the appeal and dismissed the plaintiff's suit, holding that in view of the rulings in *Man Kuar v. Tara Singh* (1) and *Dammai Singh v. Gya Dat* (2) the suit was premature.

The plaintiff thereupon appealed to the High Court.

Mr. *J. Simeon* for the appellants.

Pandit *Baldeo Ram Dave* for the respondents.

BLAIR and BANERJI, JJ.—This is a suit brought under section 42 of the Specific Relief Act, 1877 (Act No. 1 of 1877). The property, which has been claimed by a decree-holder as property answerable in execution for a debt found to be due to him, is one of which attachment had taken place but possession remained with the plaintiffs. The prayer was in terms a prayer for the release of the plot attached. The suit of the plaintiff was decreed by the Munsif, and when it went on appeal before the Subordinate Judge of Mainpuri, he held that there was no cause of action because of certain rulings of this Court; that the only course open to the plaintiff was to take objection in the execution department, and on failure thereof to bring the suit contemplated by section 283 of the Code of Civil Procedure. The ruling upon which he mainly relied is the ruling in *Man Kuar v. Tara Singh* (1). In that case Sir Comer Petheram, the then Chief Justice, in delivering the judgment of the Court, drew from the peremptory language of section 244 of the Code the inference that all such questions which were then before him should be decided in the execution department and not otherwise. Section 244 has by a continuous stream of authorities been held to apply only to cases of dispute between decree-holders and judgment-debtors or the representatives of either of them, and in no

(1) I. L. R. 7 All., 583.

(2) Weekly Notes, 1887, p. 193.

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case applies to matters involving the rights and interests of third parties. The sections relating to the claims of third parties are section 278 and the succeeding sections, and the number of cases that have arisen in cases of claim or objection by third parties is very numerous. It is quite true that that section provides a means by which, without the trouble and expense and delay of instituting fresh suits, a person whose interests are assailed in the execution department may seek his remedy, and only then, upon failure of his claim or objection, may be compelled to have recourse to the provisions of section 283 to declare his rights. Curiously enough the respondent in this case had to go back to a ruling a dozen years old to obtain colour for his suggestion that the remedy under section 278 is an exclusive and not a cumulative remedy. It seems to us upon general principles that no person can be excluded from his right of suit by the provision of a means of a special kind in certain circumstances, and we look in vain for any indication that the provisions of section 278 and the succeeding sections are intended to be exclusive. If in the conclusion to which we have arrived we are in conflict with the ruling in *Man Kuar v. Tara Singh*, we have the entire agreement of the present Chief Justice in the view we have taken, and we think also that the *cursus curiae* has run in the same direction for many years. Had the Legislature intended that the provisions of sections 278 of the Code of Civil Procedure and the succeeding sections should be of an exclusive kind, one short sentence would have made the necessary correction. It comes to this, that the Subordinate Judge in appeal has decided the case wrongly upon a preliminary point. We find that there is a cause of action in this case. We set aside the dismissal of the suit and remand the case to the lower appellate Court for re-trial according to law, under section 562 of the Code of Civil Procedure. Costs to abide the result.

Appeal remanded.