

FULL BENCH.

1893
January 24.

Before Sir John Edge, Kt., Chief Justice; Mr. Justice Tyrrell, Mr. Justice Knox, Mr. Justice Blair, Mr. Justice Burkitt and Mr. Justice Aikman.
SADHO SARAN AND ANOTHER (JUDGMENT-DEBTORS) v. HAWAI PANDE
(DECREE-HOLDER).*

Civil Procedure Code, section 43—Execution of decree—Successive applications for execution in respect of different reliefs granted by the same decree.

Section 43 of the Code of Civil Procedure is not applicable to proceedings in execution of decree. So held by Edge C. J., Tyrrell, Knox, Blair and Burkitt J. J.

Where a decree grants different reliefs, as, for example, possession of land and mesne profits, it is competent to the decree-holder to execute such decree by means of separate and successive applications in respect of each relief. So held by Edge C. J., Tyrrell, Knox, Blair and Burkitt J. J., *Ram Buxh Singh v. Madat Ali* (1) and *Radha Kishen Lall v. Radha Pershad Sing* (2) cited.

In this case the decree-holder obtained a decree from the High Court on the 22nd June 1881, awarding him possession of certain land together with mesne profits. The decree-holder applied at various times for execution of his decree in respect of the mesne profits only, the last such application having been made on the 23rd of December 1887. On his subsequently applying for execution by possession of the land, the judgment-debtors objected that the execution of the decree in that respect was barred by limitation. This objection was allowed by the Munsif. The decree-holder then appealed to the District Judge, who reversed the Munsif's decision, holding that the effect of the various applications for execution in respect of the mesne profits had been to keep the whole decree alive. The decree-holder thereupon appealed to the High Court, and the appeal was at the instance of Mahmood and Straight J. J. laid before the Full Bench.

Mr. D. N. Banerji, for the appellants.

* Second Appeal No. 500 of 1889 from a decree of J. C. Leupolt, Esq., District Judge of Ghazipur, dated the 16th March 1889, reversing an order of Maulvi Muhammad Abdul Ghafur, Munsif of Ballia, dated the 2nd February 1889.

(1) N.-W. P., H. C. Rep. 1875, p. 95.

(2) I. L. R., 18 Calc., 515.

Mr. A. H. S. Reid, Munshi Jwala Prasad and Pandit Sundar Lal, for the respondents.

EDGE C. J.—This is an appeal arising in proceedings for the execution of a decree. The appeal was referred for disposal to the Full Bench of the Court. There are four grounds stated in the memorandum of appeal. No argument has been addressed to us on behalf of the appellant in support of the first, second and fourth grounds. So far as we are concerned those grounds have not been supported. The third ground of appeal raises the question as to whether an order passed on a previous application for execution of the decree was not a bar to the present application. That ground was framed on the supposition that the order referred to decided finally that the decree had been satisfied in full. My brother Judges who are acquainted with the vernacular have considered the application upon which that order was made, and the order, and they tell me that the order related only to the application for execution in the proceedings in which it was made and that the satisfaction therein referred to applied only to the satisfaction of the money part of the decree, *i.e.*, costs and damages. Consequently the third ground of appeal fails. There was, however, another ground not taken in the memorandum of appeal, but which was the main reason why this case was referred to the Full Bench. It has been contended that section 43 of the Code of Civil Procedure applies to proceedings in execution of decrees, and that the present application in execution of a decree for possession of the property decreed cannot be entertained by reason of the plaintiff in a prior application having applied for execution of the decree in respect only of the damages and costs decreed.

Broadly speaking, section 43 of the Code of Civil Procedure applies a well known principle of English law. It is a section which prevents one person harassing another by bringing against him more than one suit in respect of the same cause of action. The third paragraph of the section makes an exception to the general rule dependent on leave being granted by the Court before the first hearing. It is a section which provides the rule to be followed

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in the inception and framing of a suit by a person having claims against another in respect of one cause of action. Section 43 cannot in my opinion apply to proceedings in execution of a decree, in which the cause of action in respect of which the suit was brought has merged.

It must not be assumed that I am of opinion that a plaintiff who had obtained a money-decree would be entitled to apply to have that decree executed in parts. What I mean is that it must not be assumed, in my opinion, that a plaintiff who had obtained a decree, we will say, for Rs. 1,000 would be entitled to execute it by successive applications to execute to the extent of Rs. 10, for instance, I do not say whether he would be entitled to split up the execution of his decree or not. That point can be decided when it arises. I only wish to guard myself against being misunderstood. I may say, however, that I have no doubt that a plaintiff would be entitled to make separate applications for the execution of a decree which provided for different reliefs, as, for example, where he obtained a decree for possession and for mesne profits to be ascertained, he would in my opinion be entitled at once to execute his decree for possession and to execute on a separate and later application his decree for mesne profits when ascertained. In the case of *Ram Baksh Singh v. Madat Ali*, (1) Sir Robert Stuart, C. J., and Mr. Justice Pearson held that where a decree was of a complex character and granted different kinds of relief to be obtained by process of different kinds there was no valid objection to separate applications for partial execution of the decree. In the case of *Radha Kishen Lall v. Radha Pershad Sing*, (2) Mr. Justice Macpherson and Mr. Justice Ameer Ali, held that section 43 of the Code of Civil Procedure did not apply to proceedings in execution of a decree, and that where a decree gave reliefs of a different character, such as a decree for possession and a decree for costs, there was nothing in the Code of Civil Procedure to prevent separate and successive applications for execution as regards each of them. I would dismiss this appeal with costs.

(1) N.-W. P., H. C. Rep., 1875, p. 95.

(2) I. L. R., 18 Cal., 515.

TYRRELL J.—I concur in all respects.

KNOX J.—I fully agree with the learned Chief Justice, that section 43 is not a section which governs or applies to proceedings in execution.

BLAIR J.—I concur entirely in the order proposed and the reasons given by the learned Chief Justice.

BURKITT J.—I also concur in the judgment of the learned Chief Justice, and I only desire to add that in my opinion section 43 of the Code of Civil Procedure is a section which deals with the frame and initiatory stages of a suit, and is not applicable, after judgment and after the rights of the parties have been decided, to proceedings in execution, any more than, for example, section 44 would be applicable. As to the case now before me I have no doubt that the Munsif, by his order of the 23rd of December 1887, did no more than dispose of the execution application immediately before him, namely, the application for recovery of the amount of costs and damages decreed, and that his order had no effect whatever on that portion of the decree which gave the judgment-debtor a right to possession of certain land. I concur in dismissing this appeal with costs.

AIKMAN J.—I concur with the learned Chief Justice in thinking that this appeal should be dismissed with costs.

Appeal dismissed.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Knox, Mr. Justice Blair, Mr. Justice Aikman, and Mr. Justice Blennerhassett.

SUBARNI AND ANOTHER (DEFENDANTS) v. BHAGWAN KHAN AND OTHERS
(PLAINTIFFS).*

Jurisdiction—Civil and Revenue Courts—Act No. XII of 1881 (North-Western Provinces Rent Act), sections 95, 96.

One Nathu was an occupancy tenant. On his death his widow Jhari continued in occupation of the occupancy holding. After the death of Jhari, one Snbarni, alleging herself to be the daughter of Nathu and Jhari, applied to the Court of Revenue to have her name entered in the village papers. occupancy tenant of Nathu's holding in succession to him. The zamfudárs w

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