

APPELLATE CIVIL.

1889
March 15.*Before Mr. Justice Banerji and Mr. Justice Aikman.*LILADHAR AND OTHERS (PLAINTIFFS) v. CHATURBHUJ AND OTHERS
(DEFENDANTS).**Civil Procedure Code, Section 244—Execution of decree—Jurisdiction of
Court executing the decree.*

Held that when a decree for the sale of specific mortgaged property is being executed, it is not open to persons made parties to the execution proceedings as legal representatives of the deceased judgment-debtor to contend in those proceedings that the mortgagor was not competent to make the mortgage, and that the decree was one which ought not to have been passed. *Maluji v. Fakir Chand* (1), *Seth Chand Mal v. Durga Dei* (2), *Sunwal Das v. Bismillah Begam* (3) and *Lochan Singh v. Sant Chandar Mukerji* (4) referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Pandit *Sundar Lal* and Babu *Durga Charan Banerji*, for the appellants.

Pandit *Moti Lal* and Munshi *Gokul Prasad*, for the respondents.

BANERJI and AIKMAN, JJ.—This is an appeal from a decree of the Subordinate Judge of Agra dismissing the suit of the plaintiffs appellants on the ground that it is barred by the provisions of section 244 of the Code of Civil Procedure. The facts are these:—One Musammat Jhuna, the widow of Kishore Chand, executed a mortgage in favour of the predecessor in title of the respondents on the 13th of January, 1881, in respect of the property to which she had succeeded as Kishore Chand's widow. The respondents obtained a decree for sale upon the said mortgage against Jhuna Kunwar on the 28th of June, 1893, and they obtained an order absolute for sale on the 23rd of March, 1895. On the 29th of August, 1895, Jhuna Kunwar died, and on the 13th of June, 1896, application was made for execution of the decree dated the 28th of June, 1893. The plaintiffs, who are

* First appeal No. 161 of 1897, from a decree of Maulvi Siraj-ud-din Ahmad, Subordinate Judge of Agra, dated the 2nd April 1897.

(1) (1896) I. L. R., 22 Bom., 225.

(3) (1897) I. L. R., 19 All., 480.

(2) (1889) I. L. R., 12 All., 313.

(4) Weekly Notes, 1899, p. 24.

1899

LILADHAR
v.
CHATUR-
BHUJ.

the sons of Kishore Chand's brother Salig, were made parties to the execution proceedings as the legal representatives of Jhuna Kunwar. They raised several objections in regard to the application for execution, the first of which was to the effect that the decree was a decree for the sale of the life interest of Jhuna Kunwar only, and that that estate having determined on her death the decree was no longer capable of execution. They also contended that Jhuna Kunwar was not competent to effect a mortgage of the property to enure beyond her lifetime, and that there was no justifying necessity for such a mortgage.

The Court executing the decree considered the first objection only, and, being of opinion that the decree ordered the sale of the mortgaged property itself and not of the life interest of Jhuna Kunwar only, dismissed the objection. Thereupon the present suit was instituted, and the relief sought is a declaration that the decree dated 28th of June, 1893, which was obtained by the defendants against Musammat Jhuna Kunwar, became void and inoperative at her death, and that the property mentioned in the plaint, which is in the possession of the plaintiffs, and which the defendants have caused to be advertised for sale, is not liable for the amount of the said decree. Among the grounds upon which the above declaration is sought, is the ground which was raised in the objections in execution proceedings, and which was decided adversely to the plaintiffs: we refer to the objection that what Jhuna Kunwar had mortgaged was her life interest only, and that the decree was for the sale of that interest alone. The learned counsel for the plaintiffs admits that the claim cannot be sustained on that ground, and that the decision on that point of the Court executing the decree was a decision properly falling within the meaning of section 244, and has become final between the parties. There are other grounds, however, upon which the validity of the decree as a decree which can operate against the estate of Kishore Chand is challenged. The suit is in substance a suit for a declaration that there was no necessity which justified the widow of Kishore Chand in making a mortgage of the property which could take effect even

1899

 LITADHAR
 v.
 CHATUR-
 BIJJ.

after her death. The ground upon which this claim is based is that she did not in reality incur a loan, and that there were no debts left by Kishore Chand, for the payment of which it was necessary to encumber his property. In order to determine whether the present suit is maintainable, we have to consider whether the questions raised in the suit are questions which could have been determined by the Court executing the decree, under section 244 of the Code of Civil Procedure. Clause (c) of that section is the clause which, it is contended, is applicable to the case. If the matter now in controversy between the parties could be decided under that clause, then there can be no doubt that the present claim is not maintainable. We are of opinion that under clause (c) of section 244, the Court executing a decree could not consider the question of the validity of the decree. A Court executing a decree is bound to give effect to it as it finds it, and it is not in the province of that Court to consider whether the decree was or was not rightly passed. The decree in this case was a decree for the sale of the property; the plaintiffs, who were parties to the execution proceedings in the character of legal representatives of Musammat Jhuna Kunwar, could only raise objections relating to the execution, discharge, or satisfaction of the decree, or to the stay of execution thereof, starting with the assumption that the decree was a valid one. That a judgment-debtor cannot dispute the validity of a decree, is a proposition for which we have abundant authority. We may refer to the recent case of *Maluji v. Fakir Chand* (1). It is clear that a person claiming title through the original judgment-debtor cannot dispute the validity of the decree, and where a decree directs the sale of particular property, a person who does not claim through the mortgagor cannot in execution contend that the mortgagor was not competent to make the mortgage, and that the decree was one which ought not to have been passed. Such questions would, in our opinion, be outside the province of the Court executing the decree; for instance, in the present case, if we assume that the present plaintiffs could

(1) (1896) I. L. R., 22 Bom., 225.

1899

LALADHAR
v.
CHATUR-
BHUI.

properly raise the objection upon which they mainly rely, the Court executing the decree would have to determine, after taking evidence, whether the mortgage was effected by Jhuna Kunwar, *i. e.* whether the mortgage bond was executed by her, whether there was consideration for the mortgage, and whether there was valid necessity for it. Such an inquiry is certainly not contemplated by section 244 of the Code of Civil Procedure. The case of a decree for money in which, after the death of the debtor, property is attached as the assets of the debtor, and in which the legal representatives of the deceased debtor object to the attachment on the ground that the property attached is no part of the assets of the deceased debtor, is different from the case of a decree which orders sale of specific property: a case of the former class is contemplated by the ruling of the Full Bench in *Seth Chand Mal v. Durga Dei* (1). But when a decree specifically orders the sale of particular property no question of assets can arise, and the Court executing the decree is bound to execute it as it stands. Any question relating to the validity of that decree must, in our opinion, be decided in a separate suit. This was the view taken by this Court in *Sanwal Das v. Bismillah Begam* (2), which is entirely in support of the contention of the learned advocate for the appellants. For the respondents our ruling in *Lochan Singh v. Sant Chandar Mukerji* (3), was pressed upon us. Some of the observations contained in that judgment may probably have to be reconsidered when a proper occasion arises, but we do not think that that ruling governs the present case.

We are of opinion that the Court below was wrong in holding that the suit was barred by section 244 of the Code of Civil Procedure. We allow the appeal, set aside the decree of the Court below, and remand the case to that Court under section 562 of the Code of Civil Procedure, with directions to readmit it under its original number in the register, and try it on the merits. The appellants will have their costs of this appeal. Other costs heretofore will abide the event.

Appeal decreed and cause remanded.

(1) (1889) I. L. R., 12, All., 313.

(2) (1897) I. L. R., 19 All., 480.

(3) Weekly Notes, for 1899, p. 24.