

further step which the decree-holder again takes of availing himself of such permission by bidding at the sale.

The application before us was an application in accordance with law to the proper Court to take the step of granting permission, which step, in ordinary circumstances, would be a distinct step taken forward in aid of execution of the decree. For these reasons we give our approval, and adhere to the view which has hitherto been the view of this Court. We dismiss the appeal with costs.

Appeal dismissed.

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DALEI
SINGH
v.
UMRAO
SINGH.

1900
June 28.

Before Mr. Justice Knox, Acting C. J., and Mr. Justice Blair.

PAHALWAN SINGH AND OTHERS (JUDGMENT-DEBTORS) v. NARAIN
DAS (DECREE-HOLDER).*

Execution of decree—Civil Procedure Code, section 230—Decree for payment of money—Hypothecation decree—Construction of document.

A decree was passed on the 5th March 1884, based on a compromise between the parties. The decree was for the payment of certain sums of money by instalments, and further went on to declare that "The property in the bond remains hypothecated as before. The defendants have no power to transfer it. If any other person brings to sale the hypothecated property in satisfaction of the debt due by the defendants, the plaintiff shall have power to take out execution of the decree without waiting for the instalments, and to cause the hypothecated property to be sold by auction." *Held*, that this was not a simple decree for the payment of money such as would come within the purview of section 230 of the Code of Civil Procedure. *Janki Prasad v. Baldeo Narain* (1) distinguished. *Chundra Nath Dey v. Burroda Shoondury Ghose* (2) and *Lal Behary Singh v. Habibur Rahman* (3) referred to.

THE respondents in this appeal held a decree against the appellants, dated the 5th March, 1884. The decree had been passed on a compromise, and was, in the first instance, a decree for the payment of certain sums of money by instalments; but it further contained a provision, quoted *verbatim* in the judgment of the Court, as to the maintenance of a lien on certain property and a power to the decree-holder to sell the hypothecated property by auction. On the 5th December 1896, an application for execution was made, which proved infructuous, and was struck off on

* First Appeal No. 82 of 1900, from a decree of Pandit Rai Inder Narain, Subordinate Judge of Farrukhabad, dated the 20th January 1900.

(1) (1876) I. L. R., 3 All., 216. (2) (1895) I. E. R., 22 Calc., 813.
(3) (1893) I. L. R., 26 Calc., 166.

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the 1st April 1897. The present application for execution was made on the 30th November 1899, and was resisted on the ground that execution of the decree was barred by limitation, regard being had to section 230 of the Code of Civil Procedure. The lower Court disallowed the objection and ordered execution to proceed. The judgment-debtors appealed to the High Court.

Munshi *Gobind Prasad* for the appellants.

Babu *Sital Prasad* for the respondent.

KNOX, ACTING C. J., and BLAIR, J.—The sole question which we have to consider is whether the decree, which was under execution in the Court below, is a simple money decree, or whether provision is made in it for something more. The appellant relies upon a Full Bench ruling of this Court, *Janki Prasad v. Baldeo Narain* (1), and contends that it is a simple money decree and no more. The circumstances under which the decree was obtained in *Janki Prasad v. Baldeo Narain* (1) and others and the case before us are very similar. In both cases the plaintiff had sued for a decree for sale. In both cases the dispute between them terminated in a compromise. In this case it was agreed that the plaintiff should realize his debt from his debtors by payment of a special sum within a special period and of the remainder by instalments. It further provided that if, after the payment of the first sum within the specified period, two successive instalments should remain in default, the plaintiff would be entitled to take out execution of the decree in a lump sum. After this follow the words which have given rise to this dispute and which we therefore quote here *verbatim* :—
“The property hypothecated in the bond remains hypothecated as before. The defendants have no power to transfer it. If any other person brings to sale the hypothecated property in satisfaction of the debt due by the defendants the plaintiff shall have power to take out execution of the decree without waiting for the instalments, and to cause the hypothecated property to be sold by auction.” If this decree be compared with the decree which was before this Court in *Janki Prasad v. Baldeo Narain* (1), it will be found that the terms hardly differ, and do not differ in any material point, beyond this, perhaps, that the decree before us is

(1) (1876) I. L. R., 3 All., 216.

a little more positive in granting the right to enforce execution by sale. There is however, this very important difference between the present case and the case of *Janaki Prasad v. Baldeo Narain* (1), that while in the latter the terms of compromise were not embodied in the decree, and all that the decree did was to refer back to it and provide for payment by instalments only, in the present case the terms of compromise have been incorporated into the decree and made part and parcel of it. In *Janaki Prasad v. Baldeo Narain* (1) the learned Judges held themselves constrained by the terms of the decree and refused to look at what they considered might well have been the intention of the parties. In the present case we are under no such constraint. The terms of the decree before us undoubtedly go beyond the terms of an ordinary simple money decree and provide for sale under certain contingencies. It is true that the decree differs from a decree formally drawn up under section 88 of the Transfer of Property Act. But we are satisfied that it was the intention of the parties and of the Court that if default was made in payment of instalments, or if any other contingency mentioned in the decree arise, the decree-holder should be entitled to proceed to sell upon the decree as it stands. Reference was made to the case of *Chundra Nath Dey v. Burroda Shoondury Ghose* (2). That case has been distinguished in *Lal Behary Singh v. Habibur Rahman* (3). We do not agree with the Court below in the view it took of the Allahabad case cited before it. We are, however, of opinion that in spite of this the Court below came to a right conclusion.

We dismiss the appeal with costs.

Appeal dismissed.

(1) (1876) I. L. R., 3 All., 216. (2) (1895) I. L. R., 22 Calc., 813.
 (3) (1898) I. L. R., 26 Calc., 166.

1900

PAHALWAN
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