

1900

MEHRBANO
v.
NADIR ALI.

be, if anything, stronger against the second mortgagee than against the first mortgagee. In our opinion the defendant-appellant here is not entitled to bring this property to sale in execution of the decree for sale which she holds. It may be that in a properly constituted suit with a proper array of parties and in a suit in which she offers to redeem the prior mortgages the appellant may be entitled to bring the property to sale after such redemption. As to that matter, however, it is unnecessary for us to express any opinion. We think that the decree of the Court below as interpreted above is a correct decree. We dismiss this appeal with costs.

Appeal dismissed.

1900

January 10.

Before Mr. Justice Knox and Mr. Justice Blair.

BARKAT-UN-NISSA (APPLICANT) v. ABDUL AZIZ (OPPOSITE PARTY).^{*}
Civil Procedure Code, section 505—Criminal Procedure Code, section 145
—Order of Magistrate for maintenance of possession no bar to the
appointment of a receiver by a Civil Court.

The fact that there exists in respect of any immovable property an order of a Magistrate passed under section 145 of the Code of Criminal Procedure is no bar to the exercise by a Civil Court of the power conferred on it by section 505 of the Code of Civil Procedure of appointing a receiver in respect of the same property.

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

The Hon'ble Mr. Conlan, Mr. W. K. Porter and Maulvi Ghulam Mujtaba, for the appellant.

Mr. S. Amir-ud-din, for the respondent.

KNOX and BLAIR, JJ.—This is an appeal from an order passed by the Subordinate Judge of Moradabad on the 29th July, 1899, refusing to appoint a receiver to certain property, the subject of a suit before him. The ground on which the learned Subordinate Judge bases his refusal is that in suits like this one before him, there is no rule for the appointment of a receiver, and injunctions only are deemed sufficient. He adds that there is no reasonable cause for the appointment of a receiver. Now as to the circumstances of the case. The respondent Maulvi Abdul Aziz is a

^{*} First Appeal No. 77 of 1899 from an order of Lala Mata Prasad, Subordinate Judge of Moradabad, dated the 29th July 1899.

person who in a prior suit had claimed a declaration from this Court that one Nurul Haq, munsarim of certain waqf property—the property now in suit—had been dismissed from his office of munsarim, that he, Maulvi Abdul Aziz, had been appointed as manager in Nurul Haq's place, and that being so, the mutawalli, Musammat Barkat-un-nissa, had no right to remove him, the said Abdul Aziz, from the managership. The suit brought by Maulvi Abdul Aziz against Musammat Barkat-un-nissa and others was fought up to this Court with the result that the declaration that Maulvi Abdul Aziz asked for was refused and his suit dismissed. This order was passed on the 10th May, 1899. Upon this the appellant before us instituted a suit for the ejection of Maulvi Abdul Aziz, and after institution applied to the Subordinate Judge for the appointment of a receiver under section 503 of the Code of Civil Procedure. The order refusing the appointment practically gives no reasons for the refusal, and it is not therefore easy to say with authority what it is that weighed upon the Subordinate Judge's mind. The matter has, in another form, been already before this Court, as the appellant asked for an appointment of an *ad interim* receiver pending the hearing of the present appeal. It was then held that the powers of a Civil Court trying an action for ejection were not in any degree controlled by reason of a Magistrate making an order maintaining possession on behalf of one of the litigants under section 145 of the Code of Criminal Procedure. The reference here made is to an order passed by a Magistrate in 1896, whereby the Magistrate, acting under the provisions of section 145 of the Code of Criminal Procedure, decided that Maulvi Abdul Aziz was in possession and issued an order declaring him to be entitled to possession until "evicted therefrom in due course of law." If this was the fact which weighed with the Subordinate Judge we can only repeat in clear terms what was said on the 18th November, 1899, namely, that the Code of Civil Procedure and the powers of Civil Courts under that Code are in no way fettered by any order that may be passed by a Magistrate under section 145 of the Code of Criminal Procedure. The Magistrate's order under section 145 is only intended to control any period up to the time when the Civil Court takes seisin of the matter and passes such orders as may be

1900

BARKAT-
UN-NISSA

v.

ABDUL AZIZ.

1900
 BARKAT-
 UN-NISSA
 v.
 ABDUL AZIZ.

necessary for the protection of the property. In the present case we consider it absolutely necessary for the preservation and better custody and management of the property that neither of the contending parties should be in possession of it until the dispute between them has been fully determined, and that the property should remain in the custody of a person independent of both parties,—a person moreover whose position will be that of an officer of the Court appointed by and answerable to the Court for all acts done by him during the period of his receivership. We accordingly allow the appeal, set aside the order of the learned Subordinate Judge, and send this case back to him to be dealt with in the light of our instructions and in accordance with the provisions of section 505 of the Code of Civil Procedure. The appellant will get her costs. We think it expedient to add that our order is not to be interpreted as an order setting aside the order of the Magistrate. The appointment of a receiver should be made with the least possible delay, and in order that the Magistrate may be aware of the purview of the order of this Court we direct that a copy be sent to him for his information.

Appeal decreed.

1900,
 January 16.

REVISIONAL CRIMINAL.

Before Mr. Justice Blair.

ABDULLAH (APPLICANT) v. JITU (OPPOSITE PARTY).*

Criminal Procedure Code, sections 87, 88, 89—Absconding offender—Proclamation and attachment—Sale of attached property—Title of purchaser.

Where property was attached and sold as property of a proclaimed offender under sections 87 and 88 of the Code of Criminal Procedure, it was held that although the proclamation was irregular, yet, the property having vested in third parties strangers to the proceedings in which the proclamation was made, the sale could not be set aside.

THIS was a reference under section 438 of the Code of Criminal Procedure, made by the Sessions Judge of Allahabad. The facts out of which the reference arose are as follows.

A charge was brought in May 1898 against the applicant Abdullah and two other persons. The applicant did not then

*Criminal Revision No. 813 of 1899.