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November, 1885. That being so, the plaintiffs have not acquired by virtue of that decree any priority as against the defendants, and the plaintiffs' suit has been rightly dismissed.

*Appeal dismissed.*

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January 16.

*Before Sir Arthur Strachey, Knight, Chief Justice and Mr. Justice Banerji.*  
RAGHUBAR DAYAL (DEFENDANT) v. BANKE LAL AND OTHERS (PLAINTIFFS).  
*Execution of decree—Procedure—Act No. XII of 1881 (N.-W. P. Rent Act), Sections 170, 171, 172—Civil Procedure Code, Sections 4A, 285, 295—Civil and Revenue Courts.*

*Held* that the procedure prescribed by section 285 of the Code of Civil Procedure, although it might be applicable as between Courts of Revenue of different grades, could not be applied where the conflict was between a Court of Revenue and a Civil Court.

Hence where the same property had been attached both by a Court of Revenue and by a Civil Court, but was first brought to sale by the Court of Revenue, it was *held* that the purchaser at the sale held in execution of the decree of the Court of Revenue took a good title as against the purchaser at the sale held in execution of the decree of the Civil Court. *Onkar Singh v. Bhup Singh* (1), *Aulia Bibi v. Abu Jafar* (2) and *Madho Prakash Singh v. Murlī Manohar* (3) referred to.

THE facts of this case are fully stated in the judgment of the Chief Justice.

The Hon'ble Mr. Conlan, Mr. E. Ohmmer and Munshi Gobind Prasad, for the appellant.

Messrs. D. N. Banerji and A. E. Ryves, and Pandit Sundar Lal, for the respondents.

STRACHEY, C. J.—This appeal is connected with first appeals Nos. 115 and 116 of 1898, and second appeal No. 405 of 1897, in which we have just given judgment. The plaintiffs-respondents here are the persons who were plaintiffs in those cases. They claim by virtue of the same execution sale of the 20th November 1885, of mauza Saidpur that we have discussed in our previous judgments. The defendant-appellant purchased certain property included in Saidpur in execution of a Revenue Court's decree obtained by himself against the same judgment-

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Second Appeal No. 633 of 1897, from a decree of E. J., Kitts, Esq., District Judge of Bareilly, dated the 27th March 1897, reversing the decree of Babu Madho Das, Subordinate Judge of Bareilly, dated the 27th November 1896.

(1) (1894) I. L. R., 16 All., 496.

(2) (1899) I. L. R., 21 All., 405.

(3) (1883) I. L. R., 5 All., 406.

debtors for a share of the profits village Saidpur, under section 93(h) of the N.-W. P. Rent Act, 1881. His purchase took place on the 3rd November, 1885. It has been suggested during the hearing of this appeal that that purchase was set aside and remained set aside at the date of the plaintiffs' subsequent purchase of the 20th November, 1885. No such suggestion appears to have been made in either of the Courts below, where the whole case proceeded on the assumption that the purchase of the defendant was in force on the 20th November, 1885, when the plaintiffs purchased. We must proceed upon that view here. The defendant obtained possession in July, 1886. The plaintiffs' purchase of the 20th November, 1885 was set aside on the 5th May, 1886, but was ultimately confirmed in a suit brought by them for the purpose against their judgment-debtors only, by an appellate decree of this Court in May, 1888, under circumstances which are fully stated in our judgments in the first appeals. In the present suit the plaintiffs' claim is for possession of three properties, known respectively as the Sagbari garden, Nauda Bagh, and Safri Bagh. The suit was decreed on appeal by the lower appellate Court, and from that decision the defendant now appeals.

The first question discussed in this appeal was as to the effect of a judgment of the District Judge of Bareilly passed on the 24th January 1890. That was a suit brought by the plaintiffs for mesne profits of the village Saidpur. The present defendant-appellant was made a defendant to that suit under section 32 of the Code of Civil Procedure, inasmuch as he alleged that part of the mesne profits claimed were profits of the property which he had purchased on the 3rd of November, 1885, and he contended that inasmuch as he had purchased that property the plaintiffs had no right to any profits arising from it from the date of that sale. It is conceded that the decree of the District Judge decided between the present plaintiffs and the present defendant that the land did not pass to the present defendant under the sale of the 3rd November, 1885. If anything passed it was the trees and such rights over the land as were necessary for the defendant's enjoyment of the trees. I think therefore that the lower appellate Court was right in decreeing the present claim so far as the

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land is concerned. That was finally decided between the parties by the decree of the 24th January, 1890. There remains the right of the defendant in respect of the trees. As to this the matter was not, in my opinion, determined by the decree of the 24th January, 1890, and remains open. That was a suit for mesne profits arising out of the land, and there was no real issue as to the ownership of the trees. Now, confining the case to the trees, the defendant's purchase was prior in date to that of the plaintiffs'. The lower appellate Court has nevertheless held that the plaintiffs' purchase was entitled to priority on two grounds. The first ground is that, having regard to section 285 of the Code of Civil Procedure, the Revenue Court had no jurisdiction to sell the property on the 3rd November, 1885, as it was already under attachment by a Civil Court in execution of Kalka Prasad's decree, under which the plaintiffs ultimately purchased. The second ground is that the defendant's purchase was invalid by reason of section 171 of the Rent Act, as it was not shown that the judgment-creditor, before applying for execution against the immovable property, had failed to obtain satisfaction of the decree by execution against the person or moveable property of the debtor.

I propose to consider first the second of these grounds. I think that the decision of the lower appellate Court is wrong. The immovable property against which execution was applied for was not a mahal or a share of a mahal. Section 172 of the Rent Act therefore governed the execution. That section makes applicable, amongst other provisions, the provisions of section 170 relating to moveable property, and section 170 provides that "no irregularity in publishing or conducting a sale of any moveable property under an execution shall vitiate such sale." By reason of section 172 it follows that the irregularity under section 171 would not vitiate the sale of this immovable property. The non-compliance with the provisions of section 171 was not, I think, more than an irregularity. Apart from the objection under section 285 of the Code, the Revenue Court had undoubted jurisdiction in the matter. As the sale of the 3rd November, 1885, was not vitiated by the irregularity, the first ground upon which the lower appellate Court has given priority to the plaintiffs' subsequent purchase in my opinion fails.

The second point is the point relating to section 285 of the Code. That section provides that "where property not in the custody of any Court has been attached in execution of decrees of more Courts than one, the Court which shall receive or realize such property and shall determine any claim thereto and any objection to the attachment thereof shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached." There has been much discussion on the question whether the word "decrees" in this section would include a decree of a Revenue Court. It was contended on behalf of the defendant that the expression, having regard to the definition of "decree" in section 2, must be read as limited to a decree of a Civil Court, and reliance was placed on the decision of this Court in *Onkar Singh v. Bhup Singh* (1) and *Aulia Bibi v. Abu Jafar* (2). Those decisions must be read with the decision of the Full Bench of this Court in *Madho Prakash Singh v. Murlu Manohar* (3). The two later cases relate, one of them to injunctions under section 492 of the Code against the sale of property under a Revenue Court decree, the other to the attachment and sale of a Revenue Court decree under section 273. They had nothing to do with any question of the procedure by which Revenue Courts are governed. The Full Bench decision dealt with that question, and established that the Revenue Courts are bound in their procedure by the provisions of the Code of Civil Procedure in matters as to which the Rent Act is silent. Section 285 is a section prescribing certain procedure in the execution of decrees; and having regard to the observations of the majority in the Full Bench case, I think that section 285 would govern the procedure of Revenue Courts, at all events to this extent, that if property is attached in execution of decrees of more Revenue Courts than one, the provisions of the section would have to be complied with by those Courts, just as the Civil Courts would be bound if the property were attached in execution of decrees of more Civil Courts than one. But here the property was attached in execution of a decree of a Revenue

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Court, and also of a decree of a Civil Court, and the question is whether the procedure of the section can be applied as between those two Courts as if they were Courts of the same character. When the procedure of section 285 is followed, and assets realized by sale in execution, then the different decree-holders obtain a rateable distribution of the assets under section 295, and section 295 makes it necessary that prior to the realization they should have applied for execution to the Court by which such assets are held. For the purpose of obtaining the benefit of the section, and to enable an application for execution to be made to the Court holding the assets, it is necessary for holders of decrees passed by other Courts to obtain the transfer of those decrees for execution from those Courts to the Court which is to realize the property. Such applications for transfer for that purpose are made under section 223. Now so far as I know there is no case in which these sections have been applied indiscriminately as between Civil Courts and Revenue Courts, that is to say, no case has been pointed out to us in which section 285 has been applied when property has been attached in execution of a Civil Court decree and also of a Revenue Court decree. Similarly, no case has been pointed out to us in which, for the purposes of section 285 and section 295 or otherwise, a Revenue Court decree has been transferred for execution to a Civil Court or *vice versa*. The principle that, in matters as to which the Rent Act is silent, the Revenue Courts are to be governed by the Code of Civil Procedure must, I think, be applied subject to the broad line of demarcation between the functions of the Civil and Revenue Courts which the Legislature has drawn, and we must not so apply it as to confound the functions of these widely different kinds of Courts, or to make one class of Court encroach upon the province of the other. Now when the provisions of the Code and those of the Rent Act relating to execution of decrees are compared, very great differences are noticeable. It is only necessary to mention a few. Under section 170 of the Rent Act no irregularity in publishing or conducting a sale under an execution is to vitiate the sale and by section 172 that applies to immovable as well as to movable property. Then there is section 171, to which I have already referred, and which makes

it necessary for a judgment-creditor to attempt to obtain satisfaction against the person or movable property of the judgment-debtor before he can apply for execution against any immovable property. There are also provisions (see the sections beginning with section 178) greatly differing from those of the Code as to claims made by third parties to property which has been attached and whose sale is contemplated. Many other differences might be mentioned. Now if section 285 of the Code is to be applied to cases where property is attached in execution of both Civil and Revenue Court decrees, how are we to deal with differences of this kind? Suppose, first, that it is the Civil Court which has to undertake the execution. It must presumably deal with any objections made to the attachment under the Revenue Court's decree, for that attachment is not affected by the fact that another Court conducts the sale. If, for instance, the judgment-debtor, under the Rent Court's decree, objects to the attachment on the ground that it is in violation of section 171 of the Rent Act, is the Civil Court to give effect to that objection? If yes, it becomes *pro tanto* a Revenue Court, it has to apply a procedure which the Rent Act shows the Legislature intended should be applicable to Revenue Courts alone. If no, the judgment-debtor loses the right which the Rent Act gives him, and the execution is validated so far as the Revenue Court's decree is concerned, merely because a Civil Court decree also happens to have been passed. On the other hand, suppose that the Court conducting the execution is a Revenue Court. In dealing with objections or claims, is it to ignore the procedure prescribed by Chapter VII of the Rent Act, and to adopt in its place the different procedure of the Code? Considerations of this kind lead me to the conclusion that it was not intended to apply sections like section 285 of the Code as between a Revenue Court on the one hand and a Civil Court on the other. If so, then there was nothing that on the 3rd November 1885, prevented the Revenue Court from selling the property, that is to say, the trees, to the defendant-appellant. In that view the title passed to the defendant under that sale, and, so far as regards the trees, the plaintiffs took nothing by their subsequent purchase of the 20th November, 1885, even assuming that sale to have been

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validly confirmed by the High Court's decree of May 1888. The suit therefore should have been dismissed as regards the trees, and decreed as regards the land of the three properties which I have mentioned. I think that the proper decree to pass now is that the appeal should be dismissed as regards the land, and that it should be allowed as regards the trees, and that the parties should pay and receive costs in proportion to their failure and success.

BANERJI, J.—I concur in the order proposed by the learned Chief Justice. The plaintiffs' suit embraced two claims, first, a claim in regard to the land covered by the trees in the three groves in question; and, secondly, a claim in regard to the trees. As for the land, it is conceded by the learned counsel for the appellant that the decree of the 24th January 1890, operates as *res judicata*. As regards the trees, I am unable to accept the contention of Mr. Conlan, that the judgment in the suit in which the said decree was passed has the effect of *res judicata* in respect of the trees also. That judgment was passed in a suit for mesne profits arising out of the land only. The question of the ownership of the trees was not a question directly and substantially in issue in that suit. Therefore any opinion which the Court may have expressed in that suit in regard to the title to the trees cannot operate as *res judicata* and the question as to the ownership of the trees was a question which the Courts below were bound to determine in this case. The purchase by the defendant being in point of time prior to the purchase by the plaintiffs, the defendant would have priority of title, unless that title could be defeated on any ground. The lower appellate Court holds that the Court of Revenue was not competent to sell the groves, because there existed on the groves a prior attachment by a Civil Court, and it relies for its conclusion on section 285 of the Code of Civil Procedure. I agree with the learned Chief Justice in thinking that the Court below has erroneously held that section 285 precluded the Revenue Court from selling the property in question. Having regard to the ruling of the Full Bench in *Madho Prakash Singh v. Murti Manohar* (1) and the provisions of section 4A of the Code of Civil Procedure, it is beyond doubt that in regard to matters of procedure as to which the Rent Act

does not contain specific provisions the Courts of Revenue are to apply the procedure of the Code of Civil Procedure. This means that as regards cases pending in Courts of Revenue the procedure should, where the Code of Civil Procedure applies, be that prescribed by that Code. But it does not follow that where the procedure of the Code of Civil Procedure applies to Courts of Revenue, those Courts should, for all purposes, be deemed to be on the same footing as ordinary Civil Courts. The Courts of Revenue are Courts of exclusive jurisdiction competent to try suits of a specific class. As regards such suits the jurisdiction of Civil Courts is excluded by the provisions of sections 93 and 95 of the Rent Act. The Legislature could not certainly have contemplated that while Civil Court should have no jurisdiction to try suits and applications of the descriptions specified in those sections, they should be competent to determine questions relating to execution arising out of such suits and applications. Where, according to the Full Bench ruling of this Court, a Court of Revenue is to apply the provisions of the Code of Civil Procedure, that procedure is applicable to proceedings pending in the Court of Revenue. In this view section 285 of the Code of Civil Procedure would so far govern proceedings in Courts of Revenue that where the same property is attached by more Courts of Revenue than one, the property is to be realized by the Court indicated by that section, namely, where a difference of grade exists between the different Courts of Revenue, by the Court of the highest grade, and where no difference exists between such Courts, by the Court which first attached the property. But I am unable to hold that where the same property has been attached both by a Civil Court and by a Court of Revenue the procedure of section 285 would apply. That section was enacted to put an end to the difficulties which used to arise under section 271 of Act VIII of 1869, and the object of the section is, that where several Civil Courts attach the same property, it shall be realized by one Court only, the remedy of the different judgment-creditors who obtained the several attachments being that provided by section 295. Now in order to enable a decree-holder to obtain a rateable distribution under that section he would have to apply to the Court which is to realize the assets for execution of

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his decree. Certainly the holder of a decree of a Revenue Court cannot apply to a Civil Court for the execution of his decree, and I am unable to hold that by virtue of section 223 of the Code a decree of a Court of Revenue can be transferred to a Civil Court for execution. Having regard to the policy of the Rent Act it cannot be conceived that it was ever intended that a decree of a Court of Revenue should be executed by a Civil Court. In my long experience I have never seen any instance of a decree of a Revenue Court having been transferred to a Civil Court for execution, or a decree of a Civil Court transferred to a Court of Revenue. Of course the fact of such transfers never having taken place does not necessarily lead to the conclusion that the power to make the transfer does not exist; but, as I have said above, I am of opinion that it was never contemplated by the Legislature that a Civil Court should execute a decree of a Court of Revenue. This affords a sufficient answer to the contention that section 285 applies to a Court of Revenue in the sense that where property has been attached by a Civil Court and by a Court of Revenue, the Court in pursuance of whose order the attachment was first made, should realize the property, whether that Court was a Civil Court or a Court of Revenue. I agree with the learned Chief Justice in holding that the Court below was wrong in its conclusion that by reason of section 285 the Court of Revenue was not competent to sell the property in question on the 3rd November 1885. The mere fact of a previous attachment existing over the property did not preclude the sale of it in pursuance of another attachment by a Court of a different class. The only other ground on which the learned Judge of the lower appellate Court has held the defendant's purchase to be void is that, under section 171 of the Rent Act, the defendant was bound to show that he could not get satisfaction of the decree obtained by him by execution against the movable property of his debtors before he could sell their immovable property. On this point I am in full accord with the opinion expressed by the learned Chief Justice. In this view the question of collusion and fraud in respect of the decree of this Court, dated the 14th May 1888, does not arise.

*Decree modified.*