

that personal use extended only to the use of arms repelling the attack by the Raja, and that the use by any of the Raja's retainers for such purpose was not equally within the intention and scope of the exemption. If the Government did intend to limit the exemption to the extent now contended for, we should expect words of a far more stringent and limiting nature. In the present case we hold that Ganga Din has established to the satisfaction of the Court that he was using the arms he carried for what may fairly be termed the "personal use" of the Raja. We accordingly dismiss the appeal. Let the record be returned.

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*Appeal dismissed.*

## APPELLATE CIVIL.

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 November 21.

*Before Mr Justice Blair and Mr. Justice Burkitt.*

JHAMMAN LAL AND ANOTHER (PLAINTIFF) v. KEWAL RAM  
 (DEFENDANT).\*

*Execution of decree—Civil Procedure Code, section 244—Suit brought under circumstances where the proper remedy was by application under section 244—Discretion of Court to treat the plaint as an application under section 244.*

Where certain judgment-debtors, whose property had been sold in execution of a decree, brought a suit to have the sale in execution set aside under circumstances in which their proper remedy in law, if any, was by means of an application under section 244 of the Code of Civil Procedure, it was held that it was not an improper exercise of the discretion of the Court in which such suit was brought to treat the plaint as an application under section 244 of the Code. *Biru Mahata v. Shyuma Churn Khawas* (1) followed. *Mayan Pathubi v. Pakuran* (2) referred to.

THE facts of this case, as stated in the judgment of the lower appellate Court, were as follows:—

"Khushwakt Rai, the father of the plaintiffs, owed a debt to Data Ram and others under a hypothecation bond dated the 11th August, 1875. Data Ram and others brought a suit for the debt, and on the 25th August, 1887, obtained a decree against the plaintiffs and Chunni Ram, their nephew (brother's son). In execution of this decree the hypothecated and unhypothecated

\* Second Appeal No. 419 of 1897 from a decree of Rai Anant Ram, Subordinate Judge of Aligarh, dated the 8th April 1897, reversing the decree of Maulvi Muhammad Azim-ud-din, Munsif of Aligarh, dated the 1st June 1896.

(1) (1895) I. L. R., 22 Cal., 483. (2) (1898) I. L. R., 22 Mad., 347.

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property of the judgment-debtors was sold at auction on the 26th April 1893, and the 20th February 1894, and the said auction sales were confirmed, and mutation of names was effected in favour of the auction-purchasers. The plaintiffs now contend that as they were employed in another district they could not present themselves in Court at the time when the decree was passed in that case, nor could they obtain a knowledge of the execution proceedings; that the decree is in a great measure contrary to the judgment and is absurd; that the amount of the decree, in satisfaction of which the auction sales took place, has been overstated and is wrong; that the invalid and fraudulent proceedings taken by the defendant have caused great loss to the plaintiffs. Hence the plaintiffs pray that the decree passed on the 25th August, 1887, so far as the defendant has fraudulently caused it to be prepared contrary to the judgment and prejudicial to the rights of the plaintiffs, may be set aside, and that the auction sale of the plaintiffs' purchased property detailed at the foot of the plaint, which, according to law, could not be sold in execution of the said decree, may be set aside, together with all the other fraudulent application proceedings. The Munsif, considering the suit to be an application under section 244, has set aside the sale of the zamindari share in claim. The substance of the grounds of appeal, as stated by the pleader for the appellant, is as follows:— (1) that the Munsif had no jurisdiction to set aside the auction sale, treating the regular suit as an application under section 244. The finding of the lower Court is *ultra vires*."

On this first plea of the defendant-appellant the lower appellate Court set aside the decree of the Munsif, who had set aside the sale of the 20th February, 1894, and dismissed the plaintiffs' suit.

The plaintiffs appealed to the High Court, their first plea being that "there is nothing in law to prevent the appellants' plaint being treated as an application under section 244 of the Code of Civil Procedure when it fulfils the other requirements of that section."

Babu *Durga Charan Banerji*, for the appellants.

Babu *Jogindro Nath Chaudhri* (for whom *Harendra Krishna Mukerji*), for the respondent.

BLAIR and BURKITT, JJ.—We thoroughly concur in the reasoning which has induced the Calcutta High Court in *Biru Mahata v. Shyama Churn Kharwas* (1), and the Madras High Court in *Mayan Pathuti v. Pakuran* (2), to pass by the formal defect in bringing a suit instead of making an application under section 244 of the Code of Civil Procedure. It seems to us a reasonable exercise of discretion and one which could do no injury to the parties. The appeal is decreed. The decree of the lower appellate Court is set aside, and that of the first Court is restored with costs in all Courts.

*Appeal decreed.*

### FULL BENCH.

*Before Sir Arthur Strachey, Knight, Chief Justice, Mr. Justice Knox, Mr. Justice Blair, Mr. Justice Banerji, Mr. Justice Burkitt and Mr. Justice Aikman.*

M. J. POWELL (APPLICANT) *v.* THE MUNICIPAL BOARD OF MUSSOORIE (OPPOSITE PARTY)\*

*Act No. XV of 1883 (N.-W. P. and Oudh Municipalities Act), section 69—Complaint of offence against Municipal bye-law—Power of Municipal Board to give a general authority to institute complaints on its behalf.*

*Held* that section 69 of the N.-W. P. and Oudh Municipalities Act, 1883, confers upon Municipal Boards in the North-Western Provinces and Oudh the power to delegate generally their authority to make complaints in respect of municipal offences; and this general delegation includes not merely the giving of authority to do the formal act of presenting a complaint to a Court, but the exercise of discretion as to whether in any given case a complaint shall or shall not be made

THIS was a reference to a Full Bench of a question arising out of an application for revision of an order convicting the petitioner of an offence against the bye-laws of the Municipal Board of Mussorie, namely, to what extent a Municipal Board is competent, under section 69 of Act No. XV of 1883, to delegate its powers as to making complaints in respect of municipal offences. The facts of the case, so far as they are necessary for the purposes of this report, appear from the judgment of the Chief Justice.

\*Criminal Revision No. 442 of 1899.

(1) (1895) I. L. R., 22 Calc., 483. (2) (1898) I. L. R., 22 Mad., 347.

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