

Against this order the plaintiff applied in revision to the District Judge, who, being of opinion that the view taken by the Judge of the Court of Small Causes was incorrect, referred the question to the High Court.

The following opinion was pronounced :—

KNOX and BLAIR, JJ.—Unfortunately we have not had the benefit of any argument addressed to us, nor of any authorities cited before us. The only paper we had before us is the reference made by the learned District Judge. We hold that the suit as instituted was not a suit which fell within the purview of clause (18) of the second schedule to the Provincial Small Cause Court's Act, and it was a suit, so far as this matter is concerned, not excepted from the cognizance of the Court of Small Causes.

This is our answer to the reference.

APPELLATE CIVIL.

1901

NORTH-
WESTERN
COMMERCIAL
BANKING
CORPORATION,
THROUGH
BABU
RAGHUBIR
SARAN,
OFFICIAL
LIQUIDATOR
v.
MUHAMMAD
ISMAIL
KHAN.

1898

January 8.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burhitt.

ADHAR SINGH (PLAINTIFF) v. SHEO PRASAD AND OTHERS

(DEFENDANTS).*

Civil Procedure Code, section 244—Sale in execution of decree—Compromise—Suit to set aside compromise and sale.

In execution of a money decree the decree-holders attached and brought to sale the interest of their judgment-debtor in a certain village, and themselves purchased it. An objection to the sale was raised by the judgment debtor, and while such objection was pending, the judgment-debtor's son is said to have entered into a compromise, whereby it was agreed that the decree-holders should take the village in full satisfaction of their decree, though it had, in fact, been sold, for only about three-quarters of the decretal amount, and that the sale should be confirmed on those terms.

The judgment-debtor subsequently filed a suit against the decree-holders, asking for a declaration that the said compromise and the confirmation of sale were collusive and invalid, and were null and void, and ineffectual as against the plaintiff.

Held, that such a suit was barred by the operation of section 244 of the Code of Civil Procedure. *Prosunno Coomar Sanyal v. Kasi Das Sanyal* (1) referred to.

* First Appeal No. 290 of 1898 from a decree of Babu B. pin Behari Mukerji, Additional Subordinate Judge of Cawnpore, dated the 18th October 1898.

1898

ADHAR
SINGH
v.
SHEO
PRASAD.

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

Babu *Jogindro Nath Chaudhri*, for the appellant.

Pandit *Sundar Lal*, (for whom Babu *Durgu Charan Banerji*), for the respondents.

STANLEY, C. J., and BURKITT, J.—This is an appeal from a decree of the Subordinate Judge of Cawnpore dismissing the plaintiff's suit, which was brought to have it declared that certain proceedings, relating to a compromise and the confirmation of the sale of property known as mauza Bahripur, were collusive and invalid, and were taken without any authority on the part of the plaintiff, and that the sale should be set aside. The defendants in the suit are decree-holders, who obtained a simple money decree against the plaintiff, and in execution attached and purchased at an auction the plaintiff's interest in the lands in question. An objection to the sale was raised by the judgment-debtor on the grounds of irregularity in the conduct and publication of the sale. Whilst these proceedings were pending, the judgment-debtor's son, Bijai Singh, is alleged to have entered into a compromise with the decree-holders whereby it was arranged that the decree holders should take the village in question in full satisfaction of their debts instead of at the sale price, and that the sale should be confirmed on these terms. The amount of the decree was Rs. 12,755, and the sale price was Rs. 9,500. By the compromise the present plaintiff obtained a considerable advantage. He, notwithstanding this, alleges that his son had no authority to enter into the compromise, and seeks, in consequence, to have the sale set aside. The learned Subordinate Judge has held that the suit is barred by the provisions of section 244 of the Code of Civil Procedure, and we are of opinion that his view on this point is correct. The question which has arisen between the parties is clearly one relating to the execution, discharge or satisfaction of a decree, and being such, it is not open to the plaintiff to take proceedings by an independent suit. This was laid down in the case of *Prosunno Coomar Sanyal v. Kasi Das Sanyal* (1) by their Lordships of the Privy Council; and, as their Lordships say,

(1) (1892) L. R., 19 I. A., 166.

“is a view to be commended, inasmuch as it is of the utmost importance that all objections to execution sales should be disposed of as cheaply and as speedily as possible.” For these reasons we are of opinion that the suit cannot be maintained, and that the decree of the Subordinate Judge dismissing the suit must be upheld. We, accordingly, dismiss the appeal with costs.

Appeal dismissed.

1898

ADHAR
SINGH
v.
SHRO
PRASAD.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burkitt.
KANHAIA LAL AND ANOTHER (DEPENDANTS) v. RAJ BAHADUR
(PLAINTIFF).*

1898

January 15.

Hindu law—Mitakshara—Joint Hindu family—Mortgage by father—Suit for sale on mortgage, son not being made a party—Subsequent suit by son for declaration that his share is not liable under the mortgage decree against father—Further plea that mortgage-debt was contracted for immoral purpose—Act No. IV of 1882 (Transfer of Property Act), section 85.

The mortgagees to a mortgage of joint family property made by the father in a joint Hindu family, consisting of father and son, brought a suit for sale against the father without making the son a party, and obtained a decree for sale of the entire property mortgaged. The son sued the mortgagees for a declaration that his share was not bound by the decree, firstly, because he was not made a party to the mortgagee's suit for sale, and secondly, because the mortgage-debt was contracted by his father for immoral or impious purposes. It was found in that suit that the mortgagees had at least constructive notice of the son's existence, and ought to have made him a party to their suit for sale. But it was also found in the son's suit that the original mortgage debt of the father was not contracted for immoral or impious purposes.

Held, that although the son might have been entitled to the decree sought by him, had he contented himself with raising the first plea only; yet, inasmuch as he himself had raised the issue of the immorality of the debt, which had been found against him, and as that was the only issue which could in any subsequent suit be raised, as between himself and the mortgagees, he was not in this suit entitled to any decree save a decree for redemption if he should desire to redeem. *Lala Suraj Prasad v. Golab Chand**(1) followed.

Held also, that the mere fact that the son had asserted his right to a moiety of the mortgaged property, and had brought the suit above referred to, did not work a partition of the property or create any separate title in the son. *Padarath Singh v. Raja Ram* (2) referred to.

* First Appeal No. 262 of 1898 from a decree of Babu Bipin Behari Mukerji, Additional Subordinate Judge of Cawnpore, dated the 21st September, 1898.

(1) (1901) I. L. R., 28 Calc., 517: at p. 531. (2) (1882) I. L. R., 4 All., 235.