

1901
August 17.

Before the Hon'ble Mr. Chief Justice Stanley, and Mr. Justice Burditt.

JHAMMAN LAL (DECREE-HOLDER) v. HIMANCHAL SINGH

(JUDGMENT-DEBTOR).*

Act No. XIX of 1873 (N.-W. P. Land Revenue Act), section 205B—Attachment of property of disqualified proprietor—Profits accruing after the release of the corpus by the Court of Wards.

Held that the prohibition contained in the second paragraph of section 205B of Act No. XIX of 1873 does not apply to the rents and profits of property which may accrue after the release of the corpus from the superintendence of the Court of Wards. *Himanchal Singh v. Jhamman Lal* (1) referred to.

THIS appeal arose out of certain proceedings for the execution of a decree against the respondent. The appellant obtained a decree against the respondent on the 14th of July 1898, at which time the property of the respondent was under the superintendence of the Court of Wards. In September 1899 the respondent's property was released by the Court of Wards. Subsequently to the release of the respondent's property the appellant attempted to execute his decree against such property and against certain profits which had accrued while the property was under superintendence, but in this he was defeated.—See *Himanchal Singh v. Jhamman Lal* (1). The appellant next sought execution of his decree by realization of certain profits of the respondent's property which had been attached in pursuance of a former application for execution, but not released from attachment at the time when the attachment of the corpus of the property and of other profits had been raised. The judgment-debtor applied to the Court executing the decree praying that the attachment on these profits also should be raised. In reply the decree-holder sought to differentiate the present claim from his former unsuccessful claims against the property of the judgment-debtor on the ground, which was admitted to be based on fact, that the profits which were then sought to be taken in execution had accrued due since the release of the corpus of the property from the superintendence of the Court of Wards. The Court executing the decree (Subordinate Judge of Mainpuri), however, gave effect

* First Appeal No. 182 of 1900, from a decree of Pandit Rajnath Sahab, Subordinate Judge of Mainpuri, dated the 14th July, 1900.

(1) (1900) I. L. R., 22 All., 364.

to the judgment-debtor's application and refused execution. Against this order the decree-holder appealed to the High Court.

Mr. *Amir-ud-din*, Pandit *Sundar Lal* and Pandit *Madan Mohan Malaviya*, for the appellant.

Pandit *Moti Lal* and Munshi *Gulzari Lal*, for the respondent.

STANLEY, C. J. and BURKITT, J.—This appeal raises a very nice question upon the true construction and meaning of s. 205B of the N.-W. P. Land Revenue Act. The property of the defendant at the time when the plaintiff obtained a decree against him on the 14th July, 1898, was under the superintendence of the Court of Wards. In September, 1899, this property was released by the Court of Wards. Subsequently the rents and profits of this and other shares in the property were collected by the Court of Wards, and in the year 1307 Fasli certain profits were collected which belong or are alleged to belong to the judgment-debtor. These accrued due after the release of his share of the property from superintendence, and it is contended by the decree-holder that he is entitled now to attach such rents and profits. On the part of the defendant it is contended that this case is governed by a decision of this Court in *Himanchal Singh v. Jhamman Lal* (1) between the same parties. In that case it was decided that the judgment-debtor could not attach rents and profits of property which had been under the superintendence of the Court of Wards at the time the decree was obtained, and which represented rents and profits, that is, the rents and profits which accrued before the property was released from superintendence. In the present case it will be observed that the rents and profits accrued after the property had been released from superintendence. Examining the section of the Act, it appears to us that the only property which is pointed at in the section as being exempted from attachment is property actually under the superintendence of the Court of Wards, and does not include property such as rents and profits which accrue after the release of the corpus from superintendence. We may observe that the question is far from being free from doubt; but we think that if the Legislature intended to

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apply the section to a case of this kind the words should have been wider, and should have included not merely property or any part of property, but also "rent and profits" of the property. For these reasons we are of opinion that the Court below is wrong in its decision and that the appeal should be granted.

It must be understood that our judgment is not to be taken as entitling the appellant to obtain payment from the Collector without a suit if the Collector contests the matter.

Appeal decreed.

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January 13.

Before Sir John Edge, Knight, Chief Justice, and Mr. Justice Blair.
BEHARI LAL AND ANOTHER (DECREE-HOLDER) v. MAJID ALI (JUDGMENT-DEBTOR).*

Execution of decree—Principle of res judicata as applied to execution proceedings—Succession certificate—Act No. VII of 1889 (Succession certificate Act), section 4.

The principle of *res judicata* applies to prevent parties raising a second time in the same suit, or in the same execution proceedings, an issue which, in that suit or in the execution proceedings in that suit, had been previously determined.

The principle of *res judicata* does not depend for its application upon the question whether the decision which is to be used as an estoppel was a right decision or a wrong decision in law or on facts. A defendant-respondent cannot avoid the application of the principle of *res judicata* by saying that he did not appear at the trial of the suit, and a plaintiff who has got an *ex parte* decree on proof of his title or on failure of the defendant to prove a defence, the onus of proving which was on him, cannot be deprived of the full benefit of the decree which he has obtained by the fact that the defendant did not appear in Court to protect his own interest. *Ram Kirpal v. Rup Suari* (1) referred to.

ONE Gauri Shankar obtained a decree for money against Majid Ali. Gauri Shankar having died, one Behari Lal, alleging himself to be a brother of Gauri Shankar, and one Muszammatt Sonkali, alleging herself to be the widow of a deceased brother of Gauri Shankar, applied for execution. No decision was come to on that application, but it was struck off under circumstances which did not make the striking off a dismissal. After this Behari Lal and Sonkali again applied for execution by arrest of the judgment-debtor. Notice of that application was apparently

* Second Appeal No. 1049 of 1894, from an order of V. A. Smith, Esq., District Judge of Gorakhpur, dated the 7th June 1894.

(1) (1883) I. L. R., 6 All., 269.