

to enforce the mortgage the right to sue does survive against the surviving defendants on the record. That being so, we think the order of the Court below was wrong. We allow the appeal, and setting aside the order of the lower Court declaring the suit to have abated, we remand the case to that Court under the provisions of section 562 of the Code of Civil Procedure, with directions to the Court to readmit the suit under its original number in the register and proceed to determine it on the merits. The plaintiff will have the costs of this appeal in any event.

Appeal decreed and cause remanded.

1902

MEHDI
HUSAIN
v.
SEGHRA
BEGAM.

REVISIONAL CRIMINAL.

1902
December 12.

Before Sir John Stanley, Knight, Chief Justice.

EMPEROR v. ALLI AND ANOTHER.*

Criminal Procedure Code, section 198—Act No. XLV of 1860 (Indian Penal Code), sections 494 and 498—Jurisdiction—Complaint.

The husband of a woman who had left him laid a complaint before a Magistrate alleging facts which seemed to constitute the offence provided for by section 498 of the Indian Penal Code. In the course of the inquiry consequent upon this complaint, it appeared that an offence falling under section 494 of the Code had been committed, and the Magistrate accordingly made an order of commitment under section 494 of the Code.

Held, that such commitment was not illegal. It was not necessary that the complainant should specify precisely the section under which the person complained against should be charged, and he had laid before the Magistrate matter which, if proved, would be sufficient to warrant a commitment under section 494. *In the matter of Ujjala Bewa* (1) approved.

In this case the complainant laid a complaint against one Alli, charging him with the commission of the offence specified in section 498 of the Indian Penal Code. In the course of the inquiry into this complaint it appeared to the Magistrate conducting the inquiry that the offence which had been committed was really the offence dealt with by section 494 of the Code, namely, bigamy. The Magistrate accordingly committed Alli to the Court of Session on a charge under section 494, and he also committed to the same Court one Musammat Banno, the mother

* Criminal Reference No. 740 of 1902.

(1) (1878) 1 C. L. R., 523.

1902

EMPEROR
v.
ALLI.

of the abducted or bigamous wife, on a charge framed under the same section read with section 114 of the Code. The Sessions Judge, to whose Court the commitment was made, moved the High Court to quash the commitment on the grounds, as to Alli, that he being a Muhammadan and unmarried could not be guilty of the offence of bigamy, and as to both Alli and Musammat Banno, that inasmuch as the complainant had in his complaint only alleged the commission of an offence falling within section 498 of the Indian Penal Code, the committing Magistrate had no jurisdiction, looking to the terms of section 198 of the Code of Criminal Procedure, to frame a charge under section 494 of the Indian Penal Code. The learned Sessions Judge referred to the case of *Empress of India v. Kallu* (1).

On this reference the following order was passed:—

STANLEY, C.J.—This case has been referred to the High Court by the learned Sessions Judge of Jhansi for the purpose of having the commitment of the accused Alli under section 494 of the Indian Penal Code, and also the commitment of the accused Musammat Banno under section 494 of the Indian Penal Code, coupled with section 114 of the Code, quashed. The grounds of the reference are, in the case of Alli, that he, being an unmarried man, could not properly be convicted of bigamy by reason of his having, as alleged, gone through the form of marriage with the wife of the complainant. It is difficult to understand how the Magistrate came to commit the accused for an offence under such circumstances. In the case of Alli the commitment is clearly wrong, and must be quashed. I order accordingly. In the case, however, of Musammat Banno, the learned Sessions Judge appears to be in error. She is charged with having abetted the marriage of the wife of the complainant with the accused Alli. Although Alli could not be found guilty of bigamy under the circumstances which I have mentioned, Ahuran, the wife of the complainant Gulab, might have been charged with the offence of bigamy, and her mother, if she aided and abetted the marriage, would be liable to be charged with, and convicted of, the offence under the

1902

EMPEROR

v.

ALTI.

provisions of section 114, coupled with section 494 of the Indian Penal Code. In the case of Musammat Banno, the Sessions Judge states that the Deputy Magistrate had no jurisdiction to take cognizance of the offence under section 494 and section 114, having regard to the provisions of section 198 of the Code of Criminal Procedure. This section directs that no Court shall take cognizance of an offence falling under (amongst other sections) sections 493 to 496 of the same Code, except upon a complaint made by some person aggrieved by such offence. It appears from the statement of the Sessions Judge that Gulab brought a complaint against Musammat Banno under section 498 of the Indian Penal Code, but not under section 494, the section under which she has been committed. He therefore considers that no complaint has been made by a person aggrieved, inasmuch as the husband, the complainant, made a complaint of an offence under section 498, and not under section 494. In this he appears to me to have been in error. Section 198 of the Criminal Procedure Code is no doubt intended to prevent Magistrates from inquiring into cases coming under sections 493 to 496, unless the husband or some person aggrieved lodges a complaint. It does not appear to me, however, to be necessary that a complaint should state precisely the section of the Code under which the accused shall be charged. It is sufficient if the complainant lays before the Magistrate matter which, if proved, would be sufficient to warrant a commitment under section 494. This the complainant has done in the present case, as appears from a perusal of the complaint. If authority were required for this proposition it is to be found in the case reported in the Calcutta Law Reports, Vol. I, p. 523, namely, *In the matter of Ujjala Bewa*, in which case under somewhat similar circumstances, where a complaint was made against a party, apparently, of taking or keeping the complainant's wife away from him, the accused, against whom no complaint in the proper sense of the term had been made by the prosecutor, was charged under section 494 of the Indian Penal Code, and it was held that the Magistrate had not acted without jurisdiction, inasmuch as he had not acted *suo motu*, but upon the motion of the prosecutor. This was a stronger case than the one now

1902

EMPEROR
v.
ALI.

before the Court. Accordingly I direct that the record be returned to the learned Sessions Judge with directions that he proceed with the trial of the charge made against Banno.

APPELLATE CIVIL.

1902

December 12.

Before Mr. Justice Burkitt and Mr. Justice Aikman.

BALKISHANJI MAHARAJ (OBJECTOR) v. MITHU LAL
(DECREE-HOLDER).*

Act No. IV of 1882 (Transfer of Property Act), section 89—Mortgage—Order absolute for sale of a portion of the mortgaged property only—Proceeds of sale of such portion insufficient to satisfy decree—Application for further order absolute for sale of other property.

If an order absolute for the sale of a portion only of the mortgaged property has been obtained by the mortgagee decree-holder and the proceeds of the sale of that portion prove insufficient to satisfy the decretal debt, there is nothing in law to prevent the decree-holder from obtaining a further order to sell another portion of the mortgaged property, provided that his application is within limitation.

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

Mr. G. W. Dillon (for whom Dr. Satish Chandra Banerji), for the appellant.

Babu Jogindro Nath Chaudhri (for whom Mr. M. L. Agarwala,) for the respondent.

BURKITT and AIKMAN, JJ.—This is an appeal by a judgment-debtor in an execution case. On the 23rd of June, 1900, Musammat Rukia got a decree under section 88 of the Transfer of Property Act for sale of certain property mortgaged to her in default of payment of the mortgage money. On the 26th of February, 1901, she got an order absolute under section 89 of that Act for sale of a portion of the mortgaged property, viz. a 5-biswa share in mauza Pipalgaon. Thereafter she transferred her decree to the respondent Bohra Mithu Lal, who has been allowed under section 232 of the Code of Civil Procedure to proceed with the execution of the decree. The assignee has now applied for an order absolute under section 89 for sale of

* First Appeal No. 187 of 1902, from a decree of Maulvi Muhammad Ahmad Ali Khan, Subordinate Judge of Aligarh, dated the 22nd July, 1902.