

decree treated the two mortgages as if, in fact, they constituted one mortgage. We think that there ought to have been a separate declaration in respect of each mortgage, and accordingly we modify the decree and declare that on the 15th of July, 1898, the sum of Rs. 1,110-12-0 was payable for principal, interest and costs on foot of the mortgage of the 27th of September, 1885, and that on the same date there was payable to the plaintiff the sum of Rs. 749-12-0 for principal, interest and costs on foot of the mortgage of the 10th August, 1886. And we direct that on payment of the sum due on the mortgage of the 27th September, 1885, with further interest on the 11th of January, 1903, the plaintiff shall deliver up to the defendants all documents relating to the property comprised in that mortgage, and transfer such property to the defendants free from incumbrances, and in like manner that on payment on the same date of the sum due on the mortgage of the 10th of August, 1886, with further interest, the plaintiff shall deliver up all documents relating to the property specified in that mortgage, and transfer such property to the defendants free from incumbrances. In each case we direct the mortgaged property to be sold in default of payment in order to satisfy the mortgage-debt. The appellant will be entitled to his costs here and hitherto.

Decree modified.

REVISIONAL CRIMINAL.

1902
July 22.

Before Mr. Justice Know.

PRABHU LAL (APPLICANT) v. RAMI (OPPOSITE PARTY)*

Criminal Procedure Code, sections 488, 489, 490—Maintenance—Agreement between the parties subsequent to the order for maintenance—Such agreement no bar to enforcement of order for maintenance so long as such order subsists.

Where an order for maintenance is passed under section 488 of the Code of Criminal Procedure and the parties afterwards come to an agreement between themselves as to what is to be paid, the existence of such agreement will not of itself be a bar to the enforcement of the order for maintenance; but it will be the duty of the party chargeable, if he wishes to be relieved from the

* Criminal Reference No. 437 of 1902.

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payment of the maintenance allowance, to bring such settlement to the notice of the Court and obtain a cancellation of the order for maintenance. *Rangamma v. Muhammad Ali* (1), not followed.

THIS was a reference under section 438 of the Code of Criminal Procedure, made by the District Magistrate of Dehra Dun. The facts out of which the reference arose sufficiently appear from the order of the Court.

Pandit *Mohan Lal Nehru*, for the applicant.

KNOX J.—This is a reference sent by the District Magistrate of Dehra Dun. On the 10th of October, 1901, an order was passed in favour of Musammat Rami, giving her maintenance at the rate of six rupees per mensem under the provisions of section 488 of the Code of Criminal Procedure. Musammat Rami, alleging that the sum awarded to her had not been paid, applied to the Deputy Magistrate of Mussoorie, and got an order from him on the 10th of May, 1902, in accordance with the provisions of section 490 of the Code of Criminal Procedure, directing Prabhu Lal to pay Musammat Rami Rs. 18, which was due to her under the order. It appears that on the 27th of February, 1902, the parties executed an agreement, which was further registered. Under this agreement it was stipulated that Prabhu Lal should pay Musammat Rami Rs. 144, and give her a cow worth Rs. 15. Musammat Rami admits having received Rs. 144. The Magistrate considers that as Musammat Rami entered into this agreement, it is inequitable for her to enforce the order of the 10th of October, 1901, any longer. In his order of reference he cites the case of *Rangamma v. Muhammad Ali* (1). This case certainly does appear to support the view taken by the Magistrate. On the other hand, I have before me the clear provisions of section 490. As I understand these provisions, it was not the intention of the Legislature that the Magistrate to whom the application is made to enforce an order of maintenance, should take into consideration anything further than the identity of the parties and the non-payment of the allowance. It is true that in this Court one step further has been taken, and we have held that it is open to the Magistrate to consider whether the person to whom the order of maintenance

(1) (1886) I. L. R., 10 Mad., 13.

has been given is, at the time she makes the application, still holding the position of wife, but I know of no further step relaxing the clear words of section 490. To me the reason appears obvious. If a person against whom an order for maintenance has been made considers that such an order should no longer be in force against him, it is for him to apply under section 489 and get the order altered. It does not seem suitable or expedient that it should be open to a second Magistrate to call in question an order duly given upon proof. I do not think this is a case in which I should interfere. Let the record be returned.

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APPELLATE CIVIL.

1902
August 13.

Before Mr. Justice Banerji.

SHEO PRASAD (DEFENDANT) v. MUHAMMAD MOHSIN KHAN

(PLAINIFF).*

Civil Procedure Code, sections 310A, 320—Execution of decree—Section 310A not applicable to proceedings in execution held by a Collector under section 320.

Held that the provisions of section 310A of the Code of Civil Procedure have no application to execution proceedings taken by a Collector under section 320 of the Code and the rules framed by the Local Government thereunder governing such proceedings.

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

Maulvi *Ghulam Mujtaba* for the appellant.

Mr. *Abdul Raoof* for the respondent.

BANERJI, J.—This was a suit brought by the respondent for the cancellation of an auction sale, for possession of the property comprised in the sale and for mesne profits, under the following circumstances. The property in question belonged to Har Bakhsh, the ancestor of the defendants Nos. 1 to 4. One Salim Khan obtained a money decree against Har Bakhsh on the 13th of April, 1896, and in execution thereof caused the property in question to be attached. As the property was ancestral within the meaning of the notification of Government,

* Second Appeal No. 650 of 1901, from the decree of Maulvi Syed Siraj-ud-din, Judge of the Small Cause Court at Agra, dated the 29th March, 1901, reversing the decree of Babu Baidya Nath Das, Officiating Munsif of Agra, dated the 28th June, 1900.