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v.
SMBER ALI
KHAN.

Man Khan and the second daughter of Hingo, amounting to six annas. The Court below has dismissed the claim of the four plaintiffs who were the descendants of Man Khan and has granted to the other plaintiffs, appellants before us, a decree for the four-anna share to which they are entitled. It is argued in this appeal that as it has been found that the appellants and the defendants Nos. 1, 2 and 3 have been in adverse possession of a six-anna share, namely, the shares of Man Khan and Musamat Bachni, the appellants should have been granted a decree for an additional 3-anna share. We are unable to accede to this contention first, because, it was not the case of the appellants that they were in adverse possession of the share of Man Khan; and, secondly, it would be inconsistent with the case set up in the plaint if we were to hold that they had acquired the share of the co-plaintiffs by right of adverse possession. So far from claiming adverse possession of the shares of those plaintiffs, the appellants asserted that they and the other plaintiffs were all in joint possession of the two-thirds share claimed by them. Were we therefore to grant a decree to the appellants on the ground now put forward on their behalf, it would be granting them a decree on a ground inconsistent with the case set up by them in their plaint. These circumstances distinguish the present case from the case of *Balmakund v. Dalu* (1) to which our attention was called. We accordingly dismiss the appeal with costs.

Appeal dismissed.

Before Mr. Justice Aikman.

MOTI RAM (DECREE-HOLDER) v. HANNU PRASAD (JUDGMENT-DEBTOR)*.

Civil Procedure Code, Section 258—Execution of decree—Satisfaction of entire decree certified by one only of two joint decree-holders—Such certificate not binding on the other.

Held that one of two or more joint decree-holders is not competent, without being authorized by the other or others, to certify under section 258 of the Code of Civil Procedure satisfaction, by payment out of Court, of the entire decree. *Balgobind v. Bhawanee Deen School* (2), *Mussamat*

* Second Appeal No. 880 of 1903 from a decree of Maulvi Aziz-ul-Rahman, Subordinate Judge of Mainpuri, dated the 20th of August, 1903, reversing a decree of Babu Keshab Deb, Munsif of Phaphund, dated the 9th of May, 1903,

(1) (1905) I. L. R., 25 All., 498. (2) (1866) 1 Agra Misc. App. 16.

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Bibec Budhwa v. Mussamut Hafezah (1), *Mahima Chandra Roy v. Pyari Mohan Choudhry* (2), *Sultan Moideen v. Savalayammal* (3), *Tarruck Chunder Bhuttacharjee v. Diwendro Nath Sanyal* (4) and *Tamman Singh v. Lachmin Kunwari* (5) referred to. *Ranee Nyra Kooer v. Doolce Chand* (6) not followed.

IN this case Thakur Das and Moti Ram held a joint decree for sale against Hannu Prasad. Moti Ram applied under section 231 of the Code of Civil Procedure for execution of the decree on behalf of himself and Thakur Das. Thakur Das certified to the Court under section 258 of the Code full satisfaction of the decree, stating that he had received Rs. 500 in cash and a bond for Rs. 100 and that he had remitted the balance of the decretal amount. He did not certify satisfaction of the decree for the benefit of himself and Moti Ram; but in fact made no mention of Moti Ram in his application under section 258. On application being made for execution of the decree the judgment-debtor, Hannu Prasad, objected that the decree had been satisfied, but the Court (Munsif of Phaphund) disallowed the objection and ordered execution to proceed. The judgment-debtor appealed and the lower appellate Court (Subordinate Judge of Mainpuri) reversed the order of the Munsif and dismissed Moti Ram's application for execution. Moti Ram thereupon appealed to the High Court.

Babu *Jogindro Nath Chaudhri*, for the appellant.

Munshi *Gobind Prasad*, for the respondent.

AIKMAN, J.—One Thakur Das and the appellant Moti Ram are joint holders of a decree against the respondent, Hannu Prasad. Moti Ram applied under section 231 of the Code of Civil Procedure for execution of the decree on behalf of himself and Thakur Das. Thakur Das certified to the Court under section 258 full satisfaction of the decree, stating that he had received in cash Rs. 500 and a bond for Rs. 100 and that he had remitted the balance of the decretal amount. He did not certify satisfaction of the decree for the benefit of himself and Moti Ram. In fact he made no mention of Moti Ram in his application under section 258. The lower appellate Court has hold that Moti Ram is bound by the satisfaction so

(1) (1879) 4 C. L. R., 70.

(2) (1869) 2 B. L. R., App. 43.

(3) (1891) I. L. R., 15 Mad., 343.

(4) (1883) I. L. R., 9 Calc., 331.

(5) *Supra* p. 318.

(6) (1874) 22 W. R.,

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certified and that his application to execute cannot be granted. Moti Ram comes here in second appeal. In my judgment the appeal must succeed. Under section 231 of the Code a Court, if it sees sufficient cause, may allow execution of a joint decree on the application of one or more of the decree-holders that the whole decree be executed for the benefit of all the decree-holders, but if it does so, it is bound to pass such order as it deems necessary for protecting the interests of the persons who have not joined in the application. When one of two or more joint decree-holders takes it upon himself to certify satisfaction of the whole decree, it is clear that no provision can be made by the Court for safeguarding the interests of the other decree-holder or decree-holders; and that if a Court were bound to recognise such an adjustment out of Court, the remaining decree-holders might be driven to bring another suit to recover money for which a decree had already been passed in their favour. If a judgment-debtor takes it upon himself or is so unwise as to pay to A out of Court money for which A and B hold a decree, he does so at his own risk. In the case of *Mussamat Bibee Budhan v. Mussamat Hafezah* (1), the learned Judges remarked:—"If one of several joint decree-holders must obtain the leave of the Court before he can proceed with execution of his decree, and if even then the Court is bound to protect the interests of the absent decree-holder, it seems perfectly clear that no decree-holder can assume to himself the power of giving a discharge out of Court for the full amount of the decree." In this present case Thakur Das has assumed to himself such a power. The case just cited was followed and approved of by a Bench of this Court in a case not yet reported, *viz.*, Ex. S. A. No. 1167 of 1902.* It is in accord with the rulings in the cases of *Bal gobind v. Bhawanee Deen Sahoo* (2), *Mahima Chandra Roy v. Pyari Mohan Chowdhry* (3), and *Sultan Moideen v. Savalajammal* (4), where it was held that a payment to one of two decree-holders out of Court is valid only to the extent of the share

* Since reported, p. 318 *supra*.

(1) (1879) 4 C. L. R., 70.

(2) (1866) 1 Agra, Misc. App. 16.

(3) (1869) 2 B. L. R., App. 43.

(4) (1891) 1. L. R., 15 Mad., 243.

of that decree-holder, and with what was said in *Tarruck Chunder Bhattacharjee v. Divendro Nath Sanyal* (1). The learned vakil for the respondents relies on the ruling in *Ranee Nyna Kooer v. Doolee Chund* (2). There are observations in the judgment in that case which do support the plea taken on behalf of the respondent; but I do not agree with them, and, as has been shown, the weight of authority is clearly in favour of the appellant. The appellant asks for execution to the extent of half of the decretal amount only, and to this he is entitled. For the above reasons I allow the appeal with costs, and setting aside the orders of the Courts below, I direct that the decree be executed in favour of Moti Ram for recovery of half the amount of the decree. The appellant will have his costs in the lower appellate Court. As in the Court of the Munsif the appellant asked for execution of the whole decree, I make no order as to the costs in that Court.

Appeal decreed.

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

JAI RAM (PLAINTIFF) v. MAKUNDA AND OTHERS (DEFENDANTS).*

Wajib-ul-arz—Conditions enabling co-sharer on payment of revenue due to take over the share of a defaulter—Mortgage by conditional sale—Act No. IV of 1882 (Transfer of Property Act), section 58—Limitation—Act No. XV of 1877 (Indian Limitation Act), schedule II, article 148.

The wajib-ul-arz of a certain village provided that if any co-sharer was in default in payment of Government revenue, certain persons—co-sharers in the patti and in the village amongst them—might, on discharging the unpaid revenue due by the defaulter, take possession of his share, though without power to partition and without power to transfer or sell. Also that if within twelve years the defaulter or his heir wished to take back the property, he could get it in the month of Jeth on payment of the amount of default without interest and without being entitled to a rendition of accounts. The wajib-ul-arz went on to provide that after the term of twelve years the heirs of the defaulter should not get the property, but the person who had paid up the arrears of revenue should be the owner.

Held that, notwithstanding the provision last mentioned, the position of the person who had obtained possession under the wajib-ul-arz by paying arrears of revenue due by a defaulter was that of a mortgagee under a

* Appeal No. 49 of 1903, under section 10 of the Letters Patent.

(1) (1883) I. L. R. 9, Calc., 831,
at pp. 835 and 836,

(2) (1874) 22 W. R., 77.