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HABIB-UL
RAHMAN
v.
RAMSAHAI

Mr. G. W. Dillon, for the appellant.

The respondent was not represented.

BLAIR and BANERJI, JJ.—This appeal cannot succeed. It purports to raise the question whether a judgment-debtor who has been once arrested and liberated can afterwards be re-arrested in execution of the same decree. The provision of law to which our attention has been drawn is embodied in section 341 of the Code of Civil Procedure, under which a judgment-debtor having been discharged from jail is not liable to be re-arrested. The judgment-debtor in the present case was never in jail. He was only arrested, and his liberation took place on the ground that subsistence money had not been paid.

A case exactly in point is that of *Subba v. Venkata* (1), according to which the mere fact of a previous arrest constitutes no bar to the re-arrest of the judgment-debtor. The appeal is dismissed, but without costs, as nobody appears for the respondents.

Appeal dismissed.

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January 19,

Before Mr. Justice Blair and Mr. Justice Banerji.

TAMMAN SINGH (JUDGMENT-DEBTOR), v. LACHHMIN KUNWARI
(DECREE-HOLDER).*

Act No. IV of 1882 (Transfer of Property Act), sections 88, 89—Execution of decree—Civil Procedure Code, section 231—Certificate of satisfaction of decree by one of two joint decree-holders—Application by the other for an order absolute for sale.

One of two joint holders of a decree under section 88 of the Transfer of Property Act cannot alone certify satisfaction of the whole decree so as to bind the other decree-holder, though he may certify satisfaction in respect of his own interest therein. Hence where one of such decree-holders purported to certify satisfaction of the whole decree, it was held that the other decree-holder, who had refused to recognise the certificate, was entitled to obtain an order absolute for sale of the mortgaged property in respect of his own share of the mortgage debt. *Mussamat Bibee Budhun v. Mussamat Hafezah* (2) followed.

THE facts of this case are as follows:—

Musammatt Jaipal Kunwari and Musammatt Lachhmin Kunwari, co-widows of Bhairon Singh, held a joint mortgage

* Second Appeal No. 1167 of 1902, from a decree of Maulvi Muhammad Hashmat-ullah, District Judge of Mainpuri, dated the 30th September, 1902, modifying a decree of Pandit Raj Nath Sahib, Subordinate Judge of Mainpuri, dated the 15th June, 1901.

(1) 1884) I. L. R., 8 Mad., 21.

(2) (1879) 4 C. L. R., 70.

decree for Rs. 1,241-2-9, dated the 24th of September, 1900, against Jeorakhan, Tamman Singh and others. On the 22nd of May, 1901, Lachhmin Kunwari applied for an order absolute for sale of the mortgaged property. In answer to this application the judgment-debtors set up the defence that the whole amount of the decree had been paid to Jaipal Kunwari, who had given a registered receipt for the amount and that a certificate of satisfaction had been entered up under the provisions of section 258 of the Code of Civil Procedure. The Court of first instance (Munsif of Mainpuri) held that in the absence of fraud the payment of the whole decretal amount to one of the decree-holders was a bar to the application of the others for an order absolute, and therefore rejected Lachhmin Kunwari's application. On appeal by Lachhmin Kunwari the lower appellate Court (District Judge of Mainpuri) held that the payment which had been certified was collusive, and that one decree-holder could not bind the other by such a certificate of satisfaction as was set up in this case. The Court accordingly modified the order of the Munsif by giving an order absolute in favour of Musammatt Lachhmin Kunwari to the extent of her share in the mortgage. From this order the judgment-debtors appealed to the High Court.

Babu Sital Prasad Ghosh, for the appellant.

Dr. Satish Chandra Banerji, for the respondent.

BLAIR and BANERJI, JJ.—This appeal arises out of an application for an order absolute under section 89 of the Transfer of Property Act. There were two decree-holders, widows of one Bhairon. One of the two decree-holders, Musammatt Jaipal Kunwari, had certified satisfaction of the whole debt, and alleged that that amount had been paid to her. The other decree-holder applied for an order absolute under section 89. The judgment-debtor objected to that application, alleging satisfaction of the whole decree. The Court of first instance allowed the objection and dismissed the application. The lower appellate Court held that the payment which had been certified was collusive, and that one decree-holder could not bind the other by such a certificate of satisfaction as was alleged in this case. Against that finding the present appeal

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is lodged. We are of opinion that the Court below is perfectly right, both on the general principle and on the wording of the section of the Code of Civil Procedure applicable to the case. It seems to us that section 231 of the Code indicates some relation between joint decree-holders of a totally different kind. In this matter the decision of the Court below is supported by the ruling in the case of *Mussamat Bibee Budhan v. Mussamat Hafezah* (1), which is obviously in point and which we approve of. The appeal is therefore dismissed with costs.

There is an objection under section 561 of the Code of Civil Procedure, to the effect that as the Musammat who was the applicant for an order under section 89 of the Transfer of Property Act could not apply only for her own share of the decretal amount, but must apply for sale to satisfy the whole amount of the decree, the Court ought to have made an order in respect of the whole amount. We are not satisfied that there is any weight in that objection. Having regard to the circumstances of this case, we are unable to hold that the applicant for the order under section 89 is entitled to such an order in respect of any amount in excess of her own share of the amount of decree. As the other decree-holder has entered satisfaction of the decree, it is for the balance of the decretal amount only that the Court can order the sale of the mortgaged property. There is no dispute in this case as to the extent of the shares of the two decree-holders. We are therefore of opinion that the Court below was right in holding that the order under section 89 should relate only to the share of Musammat Lachhmin Kunwari in the amount of the decree. We accordingly dismiss the objections under section 561 with costs.

Appeal dismissed.

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