

the alleged mortgage. All that we hold is that upon the facts which have been brought before the lower appellate Court and this High Court there was no justification for dismissing the suit upon the question of limitation which was raised before those Courts. Costs in all Courts will follow the event.

Appeal decreed and cause remanded.

1903

DIP SINGH
v.
GIRAN
SINGH.

Before Mr. Justice Blair and Mr. Justice Banerji.

HABIB-UL-RAHMAN (JUDGMENT-DEBTOR) v. RAMSAHAI AND
ANOTHER (DECREE-HOLDERS).*

1904
January 19.

Civil Procedure Code, section 341.—Execution of decree—Arrest of judgment-debtor—Non-payment of subsistence money—Re-arrest of judgment-debtor not barred.

A judgment-debtor was arrested in execution of a decree against him, but was liberated owing to non-payment by the decree-holders of subsistence money for the debtor. *Held* that such arrest was no bar to the re-arresting of the judgment-debtor in execution of the same decree. *Subba v. Venkata* (1) followed.

THIS was an appeal arising out of an application for execution of a decree. The decree was passed on the 11th of July 1899, and three applications for execution were made, on each occasion asking for the arrest of the judgment-debtor. On the 29th of May 1901 the judgment-debtor was arrested at the instance of the decree-holders, but was liberated shortly afterwards because the decree-holders did not deposit the necessary subsistence money. On the 9th of September 1901 the decree-holders again applied for a warrant for the arrest of the judgment-debtor. The judgment-debtor objected that he could not be again arrested in execution of the same decree, but the executing Court (Subordinate Judge of Saharanpur) disallowed his objection and directed a warrant to issue. On appeal by the judgment-debtor, the lower appellate Court (Additional District Judge of Saharanpur) affirmed the order of the Court of first instance. The judgment-debtor thereupon appealed to the High Court.

* Second Appeal No. 40 of 1903 from a decree of Mr. A. Yusuf Ali, Additional Judge of Saharanpur, dated the 4th December, 1902, confirming a decree of Babu Madho Das, Subordinate Judge of Saharanpur, dated the 31st May 1902.

1904

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.

1904

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.