

Judicial Commissioner. And there will be no costs of this appeal.

Solicitor for the appellant: Mr. R. T. Tasker.

Solicitors for the respondent: Messrs. Barrow, Rogers & Nevill.

J. V. W.

1904

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## APPELLATE CIVIL.

1903

November 24.

*Before Mr. Justice Knox and Mr. Justice Aikman.*

IN THE MATTER OF THE PETITION OF CHANDO BIBI.\*

*Civil Procedure Code, section 492—Execution of decree—Temporary injunction—"Wrongfully sold."*

In execution of a simple money decree against one Mohan Lal, the decree-holder, Rai Krishn Chand, attached certain property as belonging to his judgment-debtor. To this attachment one Musammat Chando Bibi objected, and her objection was sustained. The decree-holder thereupon brought a suit as provided by section 283 of the Code of Civil Procedure against the judgment-debtor and Musammat Chando Bibi, and in this suit obtained a decree from the Court of first instance. Musammat Chando Bibi appealed to the High Court, and, pending the appeal, applied for an injunction against Rai Krishn Chand under section 492 of the Code. *Held* that such an injunction could not under the circumstances be granted, inasmuch as it was impossible to say that the attached property was in danger of being "wrongfully" sold in execution of a decree within the meaning of section 492. *Kirpa Dayal v. Rani Kishori* (1) overruled.

THIS was an application for a temporary injunction restraining the sale of certain property under the following circumstances. Rai Krishn Chand held a simple money decree against Mohan Lal, in execution of which he caused certain property to be attached and proclaimed for sale as being the property of Mohan Lal. Musammat Chando Bibi objected to the attachment, and her objection was sustained. Thereupon Rai Krishn Chand instituted a suit under the provisions of section 283 of the Code of Civil Procedure, for a declaration that the property sought to be sold was the property of Mohan Lal and therefore liable to be sold in execution of Rai Krishn Chand's decree against Mohan Lal. The Court of first instance (Subordinate Judge of Benares) decreed the

\* Application in First Appeal No. 176 of 1903.

(1) (1865) I. L. R., 10 All., 80.

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plaintiff's suit. From that decree Musammat Chando Bibi appealed to the High Court, and, pending her appeal, filed an application, purporting to be made under section 492 of the Code of Civil Procedure, praying for the issue of a temporary injunction to restrain the successful plaintiff from selling the property the subject of the suit.

Maulvi *Muhammad Ishaq*, for the applicant.

Mr. *R. Malcomson*, for the opposite parties.

KNOX and AIKMAN, JJ.—We are asked to grant a temporary injunction restraining the respondent, Rai Krishn Chand, from selling the property in dispute in F. A. No. 176 of 1903. The respondent has got a simple money decree against one Mohan Lal, in execution of which he has attached and proclaimed for sale the property in suit as the property of his judgment-debtor, Mohan Lal. The applicant, Musammat Chando Bibi, objected to the attachment and sale of the property, and her objection was sustained. Thereupon Rai Krishn Chand, respondent, brought a suit under the provisions of section 283 of the Code of Civil Procedure, which has given rise to this appeal. The Court below held that the property was the property of Mohan Lal and decreed the suit. The applicant, Musammat Chando Bibi, has filed an appeal from that decree, and it is now pending in this Court. The present application purports to be one under section 492 of the Code, and the applicant prays that a temporary injunction issue restraining the decree-holder from bringing to sale the property which he has attached. In support of the application an affidavit has been filed setting out the above facts and contending that the property in dispute is in danger of being wrongfully sold in execution of a decree. Reliance is placed upon the case of *Kirpa Dayal v. Rani Kishori* (1). Even in that case the learned Judge who decided it said:—"It is not without some hesitation that I have come to the conclusion to grant it (the application before him), my chief difficulty being caused by the word '*wrongfully*' in section 492 of the Code under which it is presented." With all deference to the learned Judge who decided that case, we think that his attempt to

surmount the difficulty is not a successful one. We prefer to follow the view expressed by our brother Burkitt in a case on all fours with this, namely, on application in F. A. No. 1 of 1901, *Musammatt Haidari v. Musammatt Hayat Begam*, disposed of by him on the 3rd June 1901, and which is as yet unreported. We adopt the view there expressed, that "in a case like the present it is impossible to say that the property mentioned is in danger of being 'wrongfully' sold in execution of the decree held by the opposite party." Section 492 requires, moreover, that it must be 'proved' that the property in dispute is in danger of being 'wrongfully' sold. To hold in an application like the present that this was proved would be to decide the appeal, which is not before us. For the above reasons we discharge the rule with costs.

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

DIP SINGH (PLAINTIFF) v. GIRLAD SINGH AND ANOTHER

(DEFENDANTS).\*

1903

December 3.

*Act No. XV of 1877 (Indian Limitation Act), section 19—Limitation—Acknowledgment of existence of mortgage assigning a wrong date thereto.*

Where parties, defendants to a suit for redemption of a mortgage, had in a previous suit, in which it had been sought to eject them as trespassers, set up the existence of a mortgage, under which they alleged that they were in possession, but had assigned, as was found by the lower appellate Court, a wrong date to such mortgage, it was held that the mere attribution of a wrong date to the mortgage under which the defendants claimed to be in possession would not of itself prevent the acknowledgment so made by them from being a good acknowledgment for the purposes of section 19 of the Indian Limitation Act, 1877, in a subsequent suit for redemption of the mortgage.

THIS was a suit for redemption of a mortgage alleged to have been made in the year 1842. The mortgagor was one Maharaj Singh and the mortgagees were the predecessors in title of the present defendants. In execution of a money decree against Maharaj Singh, his equity of redemption in the mortgaged property was sold and was purchased by one Hori Lal, who is the predecessor in title of the plaintiff. Hori Lal, in 1887, instituted a suit for ejectment of the defendants as

\* Appeal No. 15 of 1903, under section 10 of the Letters Patent.