

1903

MASIH-UL-  
LAH KHAN  
v.  
MAJID-UN-  
NISSA.

a suit, the result will be that she will be wholly without remedy. We are unable to countenance such a state of things and to hold that she has no remedy. In our opinion the suit is maintainable, and should have been tried by the Court of first instance. We accordingly dismiss the appeal with costs.

*Appeal dismissed.*

1903  
July 18.

*Before Mr. Justice Aikman.*

ANNU (PLAINTIFF), v. DEBI DAS (DEFENDANT).\*

*Execution of decree—Sale of judgment-debtors' rights and interests as against representative of judgment-debtors—Sale not objected to at the time—Subsequent suit by representative against auction purchaser to recover property alleged to have been sold in excess of the share of the judgment-debtors.*

A decree having been obtained by mortgagees for the sale of the rights and interests of the mortgagors in a 10-biswa share in a certain village, both mortgagors died. One Annu was substituted on the record of the case as the representative of both the mortgagors. The decree-holders, estimating the interest of the mortgagors to amount to 5 biswas 16 biswansis, caused such interest to be sold as against Annu, who at the time took no objection to the extent of the share sold. Some years afterwards Annu brought a suit against the auction purchaser to recover 1 biswa 11 biswansis upon the allegation that the judgment-debtors' share had not amounted to more than 4 biswas 5 biswansis. *Held* that such a suit was not maintainable. *Malkarjun v. Narhari* (1) referred to. *Samcal Das v. Bismillah Begam* (2) distinguished.

THE facts of this case are as follows:—

Certain mortgagees got a decree against Bodhi, the father of the appellant, and Kunji, the uncle of the appellant, for sale of their "rights and interests" in a 10-biswa share in a certain village. After decree the judgment-debtors both died, and in execution proceedings one Annu was brought upon the records as their sole legal representative. An application was made for execution of the decree, which left the exact rights and interests of the judgment-debtors unspecified, the decree-holders asking for sale of 5 biswas 16 biswansis out of the 10 biswas, as being the share to which the judgment-debtors were entitled. Notice

\* Second Appeal No. 333 of 1902, from a decree of H. B. J. Bateman, Esq., District Judge of Bareilly, dated the 15th of January 1902, confirming a decree of Babu Ram Dhan Mukerji, Subordinate Judge of Bareilly, dated the 15th of August 1901.

(1) (1900) I. L. R., 25 Bom., 337.

(2) (1897) I. L. R., 19 All., 460.

1903

---

 ANNU  
 v.  
 DEBI DAS.

of this application was served upon Annu. He took no objection to the extent of the share estimated, but merely asked for time. The execution proceedings resulted in the 5 biswas 16 biswansis being put up for sale and purchased by one Debi Das. The sale took place in 1891. On the 7th of January, 1901, Annu instituted a suit, in which he alleged that the share of the judgment-debtors in the 10 biswas amounted to 4 biswas and 5 biswansis only, and prayed for recovery of 1 biswa and 11 biswansis on the ground that it was his property. The Court of first instance (Subordinate Judge of Bareilly) dismissed the suit, and an appeal by the plaintiff was dismissed by the District Judge. The plaintiff thereupon appealed to the High Court.

Munshi *Gobind Prasad* and Babu *Sital Prasad Ghosh*, for the appellant.

Pandit *Moti Lal Nehru* (for whom Pandit *Mohan Lal Nehru*), for the respondent.

AIKMAN, J.—Certain mortgagees got a decree against Bodhi, the father of the appellant, and Kunji, the uncle of the appellant, for sale of their “rights and interests” in a 10-biswa share in a certain village. After the decree the judgment-debtors both died, and in the execution proceedings the present appellant Annu was brought upon the record as their sole legal representative. An application was made for execution of the decree. The decree left the exact rights and interests of the judgment-debtors unspecified. The decree-holders estimated these rights as being 5 biswas 16 biswansis out of the 10 biswas. Notice of application to sell the share was served on the present appellant. He took no objection to the extent of the share estimated, but merely asked for time. The execution proceedings resulted in the 5 biswas 16 biswansis share being put up for sale, and purchased by a stranger, namely the respondent Debi Das. This took place in 1891. On the 7th of January, 1901, Annu instituted the suit out of which this appeal arises. He alleges in his plaint that the share of the judgment-debtors only amounted to 4 biswas and 5 biswansis, and he sues to recover possession from the auction purchaser of 1 biswa and 11 biswansis on the allegation that it was his property. The learned Subordinate Judge

1903

ANNU  
v.  
DEBI DAS.

dismissed the suit, and his decision was affirmed on appeal by the learned District Judge. The plaintiff comes here in Second Appeal. The Courts below held that the plaintiff ought to have objected in the execution proceedings that the 5 biswas and 16 biswansis were in excess of the rights and interests which the decree ordered to be sold. Had the decree specifically ordered the sale of 5 biswas 16 biswansis the case relied on by the learned vakil who appears in support of this appeal, namely *Sanwal Das v. Bismillah Begam* (1), would have been in point. But in my judgment the learned District Judge rightly distinguishes that case. That was a case in which the decree ordered the sale of the specific property, and not as in this case of undefined rights and interests. The learned vakil argues that his client could not in the execution proceedings have objected that the share of the judgment-debtors was wrongly estimated. In my opinion he not only could but ought to have done so. The case relied on by the learned vakil for the respondent—*Malkarjun v. Narhari* (2)—in my opinion supports the conclusion at which the lower Courts have arrived. I think the plaintiff's suit was rightly dismissed, and I dismiss this appeal with costs.

*Appeal dismissed.*

1908  
July 27.

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Aikman.*

BAKAR SAJJAD (JUDGMENT-DEBTOR) v. UDIT NARAIN SINGH  
(DECREE-HOLDER).\*

*Civil Procedure Code, section 235—Execution of decree—Application for execution verified by general attorney of decree-holder.*

*Held* that an application for execution of a decree which is verified by the general attorney of the decree-holder, who has satisfied the executing Court that he is acquainted with the facts of the case, is properly verified within the meaning of section 235 of the Code of Civil Procedure, notwithstanding that his principal may be residing within the jurisdiction of the Court. *Murari Lal v. Umrao Singh*, (3) distinguished.

UDIT NARAIN SINGH applied for execution of a decree held by him against Bakar Sajjad. The judgment-debtor objected on the ground that execution was barred by limitation; but his objection was disallowed by the Subordinate Judge, and on

\* Appeal No. 3 of 1903, under section 10 of the Letters Patent.

(1) (1897) I. L. R., 19 All., 480. (2) (1900) I. L. R., 25 Bom., 337.

(3) (1901) I. L. R., 23 All., 499.