

1905

MADAN
MOHAN LAL
v.
AKBARYAB
KHAN.

heirs were not bound by a decree fairly and properly obtained against the widow." In the later case of *Hari Nath Chatterjee v. Mothur Mohun Goswami* (1) their Lordships reaffirmed to the ruling in the case which we have quoted. We must take it, then, that a reversioner succeeding to an estate after the death of the widow of the former owner would be bound by a decree obtained against the widow, provided that there was a fair trial of the suit in which the decree was passed. Nothing has been laid before us to lead us to suspect that in the suit instituted in 1886 by the widow for the recovery of possession of the property a fair trial was not had, and, this being so, it was properly held that the suit which has given rise to this appeal failed. We, therefore, dismiss this appeal with costs.

Appeal dismissed.

1905
November 8.

Before Mr. Justice Banerji and Mr. Justice Richards.
NASIR-UN-NISSA (JUDGMENT-DEBTOR) v. GHAFUR-UD-DIN
(DECREE-HOLDER).*

Civil Procedure Code, sections 237 and 578—Execution of decree—Application for attachment—Omission to verify inventory of property sought to be attached—Irregularity.

Held that the omission in an application in execution for attachment of immovable property to verify the inventory of the property sought to be attached in the manner prescribed by section 237 of the Code of Civil Procedure is an irregularity only and does not vitiate the application. *Basdeo v. John Smidt* (2) followed.

IN execution of a decree for money the respondent applied for attachment of certain immovable property in the hands of the appellant as legal representative of his deceased debtor, Fakhr-ud-din. Objection was taken by the appellant that the inventory of the property sought to be attached was not verified in the manner prescribed by section 237 of the Code of Civil Procedure. The Court, executing the decree, however (Subordinate Judge of Bareilly), overruled the objection, holding that the omission to verify the inventory was a mere irregularity which did not affect the merits of the case, and ordered that execution should proceed. The judgment-debtor appealed to the High Court

* First Appeal No 134 of 1905 from a decree of Pandit Pitambar Joshi, Subordinate Judge of Bareilly, dated the 15th of May, 1905.

(1) (1893) I. L. R., 21 Calc., 8. (2) (1899) I. L. R., 22 All., 55.

renewing her objection as to the absence of the verification of the inventory.

Dr. *Satish Chandra Banerji* and *Babu Lalit Mohan Banerji*, for the appellants.

Mr. *B. E. O'Connor* and *Maulvi Ghulam Muftaba*, for the respondent.

BANERJI and RICHARDS, JJ.—Two pleas have been urged before us in this appeal, which arises out of an application for execution. The first is that the Court, having on the 15th of April, 1905, made an order dismissing the application for execution, was not competent to reopen the proceedings by ordering attachment of property. This plea is founded upon a misconception, as we find on a reference to the record that the formal order drawn up on the 15th of April, 1905, in pursuance of the judgment of that date only directed the application to be dismissed, in so far as it related to the property which had been attached in 1898. It did not absolutely dismiss the application, and, therefore, the Court was competent to dispose of that part of the prayer in the application for execution which asked that the property of the appellant should be attached for recovery of costs awarded by the decree. The second contention raised before us is that the application for execution was defective inasmuch as the inventory of immovable property sought to be attached and sold was not verified as required by section 237 of the Code of Civil Procedure. It is true that reference was made to the property in the application for execution, and that the application itself was verified, but the inventory at the foot of it was not separately verified. This, it seems to us, was an irregularity, and not such a defect as would justify our interfering with the decree of the Court below, having regard to the provisions of section 578 of the Code. This principle was laid down in the case of a plaint which had not been signed by the plaintiff or by any person duly authorized by him in that behalf in *Basdeo v. John Smidt* (1). The same principle equally applies to the case of an application for execution. The decree-holder filed, with his application, an extract from the Collector's register as to the extent of the property of the appellant which he wanted to be attached, and, as the Court below points out, the

1905

NASTR-UN-
NISSA
O.
GHAFUR-UD-
DIN.

(1) (1899) I. L. R., 22 All., 55.

1905

NASIB-UN-
NISSA
v.
GHAFUR-UD-
DIN.

judgment-debtor has not been prejudiced in any way by the omission to verify the inventory. This is not a matter which affects the merits of the case or the jurisdiction of the Court. We, therefore, decline to interfere with the order of the Court below, and dismiss the appeal with costs.

Appeal dismissed.

1905

November 9.

Before Mr. Justice Knox and Mr. Justice Aikman.

MUHAMMAD ALI (PLAINTIFF) v. HUKAM KUNWAR AND OTHERS
(DEFENDANTS)*.

Pre-emption—Wajib-ul-arz—Co-sharer—Owner of a plot of grove land.

Held that a person who buys a plot of grove land in a village does not thereby become a co-sharer in the village so as to entitle him to enforce a right of pre-emption under a wajib-ul-arz which confers such right upon co-sharers. *Dakhni Din v. Rahim-un-nissa* (1) and *Ali Husain Khan v. Tasaddug Husain Khan* (2) referred to.

THIS was a suit for pre-emption based upon the wajib-ul-arz. The plaintiff founded his claim on the fact that he had purchased a grove formerly belonging to the vendors, situated in the village in which was the property in suit; that this made him a co-sharer in the village, and under the wajib-ul-arz he had a right to pre-empt. The Court of first instance (Munsif of Sahaswan) decreed the claim. The defendants vendees appealed, and the lower appellate Court (Subordinate Judge of Shahjahanpur) set aside the munsif's decree and dismissed the plaintiff's suit. The plaintiff accordingly appealed to the High Court.

The Hon'ble Pandit *Sundar Lal* and Pandit *Baldeo Ram Dave*, for the appellant.

Babu Parbati Charan Chatterji, for the respondents.

KNOX and AIKMAN, JJ.—The sole question which we have to decide in this Second Appeal is whether a person who buys a plot of grove land in a village becomes a co-sharer in the village so as to entitle him to enforce a right of pre-emption under the wajib-ul-arz which confers such right upon co-sharers. The learned vakil for the appellant relied on the case of *Dakhni Din v. Rahim-un-nissa* (1). In that case the person who sought to

* Second Appeal No. 95 of 1904 from a decree of Babu Nihala Chandra, Subordinate Judge of Shahjahanpur, dated the 25th November, 1903, reversing a decree of Maulvi Muhammad Azim-ud-din, Munsif of Sahaswan, dated the 11th of July, 1903.

(1) (1894) L. L. R., 16 All., 412.

(2) *Supra*, p. 124.