

RICHARDS, J.—The question would, I think, be quite free from difficulty but for the ruling in *Mata Din's* case. It seems to me that we cannot hold the ruling in that case to be correct and answer this question in the affirmative. In the interval between the conclusion of the arguments and the delivery of judgment to-day, I have had the advantage of reading and considering the judgment just now delivered by the Chief Justice. I entirely concur with that judgment. I concur with the rest of the Court in saying that the question referred should be answered in the affirmative.

BY THE COURT.—The order of the Court is that the question referred to us be answered in the affirmative.

APPELLATE CIVIL.

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

GANGA PRASAD AND ANOTHER (PLAINTIFFS) v. GANGA BAKHSH SINGH AND OTHERS (DEFENDANTS).*

Civil Procedure Code, sections 320, 325A—Ancestral property—Execution of decree—Property taken under management of the Collector—Disabilities of proprietor pending term of management.

In pursuance of the power conferred upon him by rules framed by Government under section 320 of the Code of Civil Procedure, the Collector sanctioned a lease of certain zamindari property of the judgment-debtor for a period of seventeen years, the lease being executed in the name of the judgment-debtor but with the permission of the Collector.

Held that the disabilities imposed by the first paragraph of section 325A of the Code affected the judgment-debtor during the pendency of such lease; and *semble* that such disabilities continued so long as any of the debts for the satisfaction of which the judgment-debtor's property was taken under management by the Collector remained unpaid.

THE facts of this case are as follows :—

One Nath Bakhsh Singh having several decrees being executed against him, his zamindari property was taken under the management of the Collector. On the 10th of May 1884 a lease of this property was made in favour of one Bindhachal Shukul, in the name of Nath Bakhsh Singh, but purporting to be made with the consent of the Collector. Subsequently, namely, on the

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* First Appeal No. 58 of 1905 from a decree of Munshi Achal Behari, Subordinate Judge of Gorakhpur, dated the 22nd of December 1904.

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31st of May 1885, and the 10th of January 1890, Nath Bakhsh Singh executed two mortgages affecting the property leased in favour of Ganga Prasad and Thakur Prasad. On suit by the mortgagees for realization of the mortgage debts due on these two deeds, Bindhachal Shukul, one of the defendants, resisted the suit upon the ground that section 325A of the Code of Civil Procedure was a bar to the execution of the two mortgages sued on. The Court of first instance (Subordinate Judge of Gorakhpur) upheld this contention in respect of the mortgage of 1885, but gave the plaintiffs a decree upon the later mortgage, holding that it had been executed after the property had ceased to be under the management of the Collector. From this decree the plaintiffs appealed to the High Court in respect of the mortgage of 1885.

Babu *Jogindro Nath Chaudhri* and the Hon'ble Pandit *Sundar Lal*, for the appellants.

Pandit *Moti Lal Nehru*, Munshi *Kalindi Prasad* and Babu *Iswar Saran*, for the respondents.

STANLEY, C. J., and BURKITT, J.—This appeal arises out of a suit for sale on two mortgages, dated respectively the 31st of May, 1885, and the 10th of January 1890, executed by Nath Bakhsh Singh in favour of the plaintiffs Ganga Prasad and Thakur Prasad. One of the defendants, Bindhachal Shukul, pleaded that, before the execution of the mortgages, decrees had been put into execution against the mortgagor and the property placed under the management of the Collector, and that consequently section 325A of the Code of Civil Procedure was a bar to the execution by the mortgagors of the two mortgages sued on. The Court below held that the provisions of this section barred the claim in respect of the mortgage of 1885, but held that the mortgage of 1890 was valid, inasmuch as that mortgage was executed after the property had ceased to be under the management of the Collector. This appeal has been preferred against this decree so far as it dismissed the claim under the mortgage of 1885. The case put forward on behalf of the appellants is that a lease of the property in dispute was executed in favour of the defendant Bindhachal Shukul, on the 10th of May 1884, for a term of 17 years, and that so soon as that lease was executed the powers of the Collector ceased and therefore it was in the

competency of the mortgagors to execute the mortgage of 1885. We find on turning to the lease of 1884, that it was not a lease by the Collector but a lease by the judgment-debtor, Nath Bakhsh Singh, in his own name with the consent of the Collector. Section 325A provides that so long as the Collector can exercise or perform in respect of the judgment debtor's immovable property any of the powers or duties conferred upon him by sections 322—325 (inclusive), the judgment-debtor or his representatives in interest shall be incompetent to mortgage, charge, lease, or alienate such property except with the written permission of the Collector. It appears to us that the view taken by the Court below is correct. The property was under the management of the Collector, notwithstanding the fact that the lease of the 10th of May 1884 was made with his consent. If the lease had determined, for example, by reason of non-payment of rent, it would have been the duty of the Collector under the Code to make arrangements for the management of the property, either by himself or by granting a lease. We are further disposed to think that, irrespective of the lease of 1884, the property was, under the provisions of the Code of Civil Procedure, under the management of the Collector so long as any of the debts in respect of which execution had issued, remained unsatisfied with effect from the date when the decrees were transferred to the Collector for execution. We, therefore, upholding the view of the Court below, dismiss this appeal with costs.

Appeal dismissed.

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