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the agreement is signed by the Chairman and the Secretary. We allowed time for the production of the resolution and the contract. It was then discovered that the contract was on the file. We have examined it. We find that it is signed by the defendant, and on the back are endorsed the signatures of both the Secretary and the Vice-Chairman, and this endorsement refers to the contents of the contract and its confirmation. In our judgment this is a sufficient compliance with the requirements of section 47 of the Municipalities Act. We decree the appeal, set aside the decree of the lower appellate Court on this preliminary point, and direct that Court to re-admit the appeal upon its file of pending appeals and dispose of it according to law. Costs here and hitherto will abide the event.

Appeal decreed and cause remanded.

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

1907 *January* 31.

SHEODIHAL SAHU (PLAINTIFF) *v.* BHAWANI (DEFENDANT).*

Civil Procedure Code, sections 244 *and* 583—*Possession of property taken without intervention of Court—Decree reversed on appeal—Suit for restitution—Discretion of Court.*

In a suit for redemption the plaintiff obtained a decree and took possession of the property in suit without the intervention of the Court. The decree, however, having been reversed on appeal, the defendant brought a regular suit to recover possession of the mortgaged property. *Held* that a regular suit was precluded by the provisions of sections 244 and 583 of the Code of Civil Procedure, but the Court of first instance would have exercised a proper discretion if it had treated the plaint as an application under section 583 of the Code. *Dhan Kunwar* v. *Mahtab Singh* (1) and *Saran* v. *Bhagwan* (2) referred to.

THE facts which gave rise to this appeal are as follows. One Musammat Bhawani executed a mortgage of certain property in favour of Sheodihal Sahu. She subsequently sued for redemption, and obtained a decree on the 23rd of September 1901. This decree was not put into execution, but the mortgagor took

* Second Appeal No. 14 of 1906 from a decree of W. R. G. Moir, Esq., District Judge of Jaunpur, dated the 2nd of November 1905, confirming a decree of Maulvi Syed Zainul-abdin, Subordinate Judge of Jaunpur, dated the 8th of March 1905.

(1) (1899) I. L. R 22 All., 79. (2) (1903) I. L. R. 25 All., 441.

possession of the mortgaged property without the intervention of the Court on the day after the decree was passed. The mortgagee, however, appealed against the decree for redemption and the decree was reversed, and this decree was affirmed in second appeal by the High Court. The mortgagee thereupon instituted a suit against the mortgagor to recover possession of the mortgaged property. Both the Court of first instance (Subordinate Judge of Jaunpur) and the lower appellate court (District Judge of Jaunpur) dismissed the suit holding that it was barred by the operation of sections 244 and 583 of the Code of Civil Procedure. Both Courts declined to treat the plaint as an application under section 583 of the Code. The plaintiff appealed to the High Court.

Pandit *Moti Lal Nehru*, and Maulvi *Ghulam Mujtaba*, for the appellant.

Dr. *Satish Chandra Banerji* and Babu *Sital Prasad Ghosh*, for the respondent.

STANLEY, C. J., and BURKITT, J.—This appeal has been preferred under the following circumstances. The defendant Musammat Bhawani executed a mortgage in favour of the plaintiff of certain property. She subsequently sued for redemption and obtained a decree on the 23rd of September 1901. She did not put the decree into execution, but took possession of the mortgaged property without the intervention of the Court on the day after the decree was passed. An appeal against the decree was preferred and the decree was reversed. On second appeal to the High Court the decree of the lower appellate Court was affirmed. Thereupon the plaintiff appellant before us instituted a suit for recovery of the mortgaged property of which Musammat Bhawani had taken possession without the intervention of the Court. In the Court of first instance the plaintiff, to meet the defendant's objection that the claim was barred by sections 244 and 583 of the Code of Civil Procedure, asked the Court, in the event of it holding that these sections were fatal to the suit, to treat the plaint as an application under them for restitution of the property. The Court of first instance dismissed the plaintiff's claim on the ground that it was barred by the sections to which we have referred. On appeal the lower appellate Court upheld the

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decision of the Court of first instance and stated as regards the application to have the plaint treated as an application under section 244 and section 583 that "the Court might have so admitted it had the appellant allowed that no regular suit lay; but the appellant has contested this point up to the appellate Court." On this account the learned District Judge considered that it would have been improper for the lower Court, and still more so for him, to treat the plaint as an application.

An appeal has now been preferred to this Court, and the main grounds of appeal are that sections 244 and 583 do not stand in the way of a suit; that section 583 does not bar the institution of a regular suit, and that in any case if these sections are applicable, the Judge ought to have treated the plaint as an application under them. We are disposed to think that the sections in question do forbid a suit such as the present one. By the language of section 244 a suit is prohibited. Although there is no express prohibition against the institution of a suit for recovery of property by way of restitution or otherwise contained in section 583, still the language of that section, coupled with the prohibition in section 244, appears to be imperative. The words are:—"When a party entitled to any benefit by way of restitution or otherwise under a decree passed in an appeal desires to obtain execution of the same, he shall apply to the Court which passed the decree against which the appeal was preferred, and such Court shall proceed to execute the decree passed in appeal according to the rules prescribed for the execution of decrees in suits." This apparently is the view which was taken by the learned Judges of this Court who decided the cases of *Dhan Kunwar* v. *Mukhtab Singh* (1) and *Suran* v. *Bhagwan* (2). We think, however, that in the present instance at all events the Courts below ought to have acceded to the request of the plaintiff appellant and treated the plaint as an application under the sections to which we have referred. The reason assigned by the learned District Judge for his refusal to entertain this application does not appear to us to be reasonable. We therefore allow this appeal, set aside the decrees of both the lower Courts and remand the suit to the

(1) (1899) I. L. R. 22 All., 79. (2) (1903) I. L. R. 25 All., 441.

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Court of first instance through the learned District Judge under section 562 of the Code of Civil Procedure, with directions that the plaint be treated as an application under sections 244 and 583 and be disposed of on the merits. Costs here and hitherto will abide the event.

Appeal decreed and cause remanded.

APPELLATE CRIMINAL.

1907
February 15.

Before Mr. Justice Banerji.

EMPEROR *v.* CHEDA LAL.*

Act No. XLV of 1860 (*Indian Penal Code*), *section* 192 — *Fabricating false evidence—Definition.*

One Cheda Lal, whose brother Debi was an accused person, applied to the Court on behalf of the accused asking that the witnesses for the prosecution might first of all be made to identify Debi. The Court assenting to this request, Cheda Lal produced before the Court ten or twelve men, none of whom could be identified as Debi by any of the prosecution witnesses. Upon being asked by the Court where Debi was, Cheda Lal pointed out a man who, upon further investigation, was discovered to be wearing a false moustache and to be not Debi at all, but one Chimman. *Held* upon these facts that Cheda was rightly convicted of fabricating false evidence having regard to the definition contained in section 192 of the Indian Penal Code.

THE facts of this case are as follows:—Debi, the brother of the appellant, was charged before a Deputy Magistrate, with enticing away a married woman. When the case was called on for hearing, an application was presented on behalf of Debi praying that the witnesses for the prosecution should first of all be made to identify him. A similar application was verbally made by the appellant Cheda Lal. The Deputy Magistrate granted the application and directed Cheda Lal to bring up Debi. Cheda Lal brought before the Deputy Magistrate, who was holding his Court in camp, ten or twelve men and said that Debi was one of them. The Deputy Magistrate, however, did not satisfy himself that the accused person was in fact before him. The men were ranged in a line and the witnesses were called in to identify Debi. All of them, including the woman said to have been enticed away, failed to do so. Thereupon the Deputy Magistrate asked the appellant Cheda Lal where Debi was. He

* Criminal Appeal No. 1003 of 1906.