

defamatory statement in a pleading, and, therefore, the *dictum* cannot compel us to hold that such a publication is absolutely protected. We think the learned Judge of this Court was wrong in thinking that such an action could, under no circumstances, be maintained, and the result will be that the appeal will be allowed, and the judgment of the District Judge restored with costs of both the hearings in this Court.

S. C. G.

Appeal allowed.

Before Mr. Justice Ghose and Mr. Justice Gordon.

RAJKESHWAR DEO AND ANOTHER (JUDGMENT-DEBTORS) v. BUNSHIDHUR MARWARI, A MINOR, BY HIS GUARDIAN MOHOORI DASSI (DECREE-HOLDER). *

1896
June 10.

Ghatwali tenure—Decree, Execution of—Rents due to ghatwal during his lifetime—Attachment.

After deduction of all necessary outgoings from the total rents due to a *ghatwal*, the residue, being his own absolute property, may be attached in execution of a personal decree against him.

Bally Dobey v. Ganei Deo (1) distinguished; *Kustoora Kumari v. Benoderum Sen* (2) approved.

THE plaintiff had obtained a decree against the first defendant, a *ghatwal*. In execution of the decree, the plaintiff sought to attach so much of the rents due to the defendant as would remain after payment of Government revenue, wages of chowkidars, and other necessary outgoings. The Subordinate Judge made the order asked for, which was confirmed on appeal to the District Judge. The defendant appealed to the High Court.

Babu Srinath Dass and Babu Jogesh Chunder Dey for the appellant.—Inasmuch as the *ghatwal* holds the estate in return for certain services, it is inalienable, and necessarily the rents due to him are also inalienable; and therefore the order of the lower

* Appeal from Order No. 370 of 1895, against the order of J. H. Bernard, Esq., District Judge and Deputy Commissioner of the Sonthal Pergunnahs, dated the 7th of September 1895, affirming the order of H. H. Heard, Esq., Sub-Divisional Officer of Deoghur, dated the 27th of June 1895.

(1) I. L. R., 9 Calo., 388.

(2) 4 W. R., Misc. Rul., 5.

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Court is wrong—*Bally Dobby v. Ganei Deo* (1). If the rents are allowed to be attached, the fund out of which the services are rendered will be diminished ; and that ought not to be encroached upon.

Babu *Karuna Sindhu Mukerji* and Babu *Lalmohan Ganguli* for the respondent.—The case of *Bally Dobby v. Ganei Deo* (1) is distinguishable ; for it was a suit for sale of the mortgaged property which was a *shikmi ghatwali* tenure. Where a *ghatwal* dies leaving personal debts, the proceeds of the tenure go to the successors, and are not chargeable with the personal debts. But the present case is the case of personal debts due from a living *ghatwal*, and the decree-holder does not seek to satisfy his claim by sale of the tenure, but only by attachment of so much of the rent as remains after payment of Government revenues, wages to chowkidars, and similar outgoings. And although a *ghatwal* has no power to burthen his *ghatwali* after his death for debts contracted by him, yet he has full power to do so during his lifetime ; and, that being so, there is no reason why the surplus, after all necessary outgoings, should not be attached.

The judgment of the Court (GHOSE and GORDON, JJ.) was as follows :—

The question that arises in this appeal is whether, in execution of a decree against a *ghatwal*, the rent of the *ghatwali* tenure due to him can be attached for the satisfaction of the claim of the decree-holder.

The application of the decree-holder in this case is not to attach and sell the *ghatwali mehal* itself, nor the whole of the rents due to the *ghatwal* ; but what he asks for is, that so much of the rents as may be left after the payment of the Government revenue, the wages of the chowkidars employed by the *ghatwal*, and other like charges, might be attached for the satisfaction of his decree.

The Court below has allowed the prayer of the decree-holder, and the *ghatwal* has appealed to this Court.

The learned vakil for the *ghatwal* has contended before us,

upon the authority of the case of *Bally Dobej v. Ganei Deo* (1.) that inasmuch as the *ghatwal* holds the estate in lieu of service, it is inalienable, and, necessarily, the rents due to him are also inalienable; and that, therefore, the order of the Court below is wrong in law.

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It would appear upon a reference to the paper-book in the case of *Bally Dobej*, which we sent for, that the suit there was to enforce a mortgage security, that is to say, to sell the *ghatwali mahal* which had been hypothecated by a *ghatwal* under a bond. The *ghatwal* had died, leaving a son; and the suit was to enforce the mortgage security against the son. There was no question like the one which arises in the case now before us, *viz.*, whether, during the lifetime of the *ghatwal*, the rents due to him, or rather the profits due to him, after all the necessary outgoings, could be seized and appropriated by the decree-holder for debts incurred by the *ghatwal*.

No doubt there is a passage in that judgment to the effect that the proceeds of a *ghatwali* tenure are not liable to attachment for the satisfaction of the debts due from the holder thereof; but reading the judgment by the light of the facts to which we have adverted, it is no authority in the present case.

There is another case upon the subject that has been brought to our notice, the case of *Kusteora Kumari v. Benoderam Sen* (2). We are disposed to agree in the view therein expressed.

There, the profits of a *ghatwali* tenure were sought to be seized in execution of a decree after the death of the *ghatwal*, and the learned Judges observed: "It is not denied that the money now in the hands of the Court of Wards represents the profits of the land for a period subsequent to the judgment-debtor's death, and it ought not in justice to be appropriated to pay that person's individual debts." Then, referring to certain decisions of the late Sadr Court, which were quoted before them, they expressed themselves as follows: "We are not told whether these surplus profits were collected during the lifetime of the judgment-debtor, in which case they might reasonably be considered as his personal property and so liable; but if the decisions referred to profits accumulated

(1) 1, L. R., 9, Calc., 388.

(2) 4 W. R., Misc. Ral., p. 5.

1896 after the judgment-debtor's death, we think that such decision was
 RAJKESHWAR incorrect."

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 BUNSHIDHUR seeks to attach for the satisfaction of his claim are profits due to
 MARWARL. the *ghatwal* after all the necessary outgoings during his lifetime ;
 and they may well be regarded as his personal property, and as
 such liable to be seized and appropriated by the decree-holder.

Upon these considerations, we think that the order of the Court
 below is right, and that this appeal should be dismissed with costs.

H. W.

Appeal dismissed.

1896
 June 3.

Before Sir W. Comer Petheram, Kt., Chief Justice, and Mr. Justice Jenkins.

HARKANT SEN (DECREE-HOLDER) v. BIRAJ MOHAN ROY
 (JUDGMENT-DEBTOR). *

*Limitation Act (XV of 1877), Schedule II, Article 179, clause (2)—Execution of
 decree—Final decree of the Appellate Court—A portion of the claim
 disallowed, appealed from, by the decree-holder.*

A brought a suit against B for a sum of money, and obtained a decree
 for a portion of the amount claimed. On the 30th November 1891, the
 plaintiff appealed as to the balance of his claim; but the appeal was
 dismissed by the District Court on 1st June 1892, and by the High
 Court on 31st May 1894.

On an application, on 1st June 1895, by the assignee of the original
 decree-holder, to execute the said decree, an objection was raised by the
 judgment-debtor that execution was barred by lapse of time.

Held, that Article 179, Schedule II, clause (2) of the Limitation Act applied
 to the case; the period of limitation ran from the date of the final
 decree of the Appellate Court, and the application for execution, being
 within three years from that date, was within time.

Sakhalchand Rikhawdas v. Velchand Gujar (1) followed.

THE facts of the case, for the purposes of this report, appear
 sufficiently from the judgment of the High Court.

* Appeal from Order No. 81 of 1896, against the order passed by
 A. Pennell, Esq., District Judge of Backergunge, dated the 27th November 1895,
 affirming the order passed by Babu Dwarkanath Mitter, Subordinate Judge
 of that District, dated the 5th of July 1895.