

1910

KAPIL DEO
SINGH
v.
RAM REKHA
SINGH.

petitioner we are referred to the case of *Vedanta Desikacharyulu v. Perindevamma* (1), and we were asked to hold that a person praying for the relief which the plaintiff sought, should not be refused permission to sue *in forma pauperis* and to be left to raise funds by mortgaging his claims. It has, however, been pointed out to us by the other side, and we accept the contention, that the petitioner in trying to raise money upon the equity of redemption would not in effect be mortgaging his claim. The equity of redemption in many cases is property of far greater value than the mortgage which the person instituting the suit may be seeking to redeem. If any obscurity remains in the present case it is the fault of the plaintiff that he did not remove that obscurity. There is no right existing to sue *in forma pauperis*. It is an exemption from the ordinary rule which he claims from the court and the burden of proving the exemption lies upon the person who claims the exemption. We are not satisfied that the court was in error when it held that the petitioner had not proved his pauperism. As he had not proved his pauperism the court was within its jurisdiction in refusing permission. We dismiss the application with costs.

Application dismissed.

1910

November 8.

Before Mr. Justice Sir George Know and Mr. Justice Karamat Husain.

NAGAR MAL AND OTHERS (APPLICANT) v. RAM CHAND (OPPOSITE PARTY).
Civil Procedure Code (1908), order XXI, rules 18, 19, 20—Execution of decrees—Cross decrees—Set-off—Money decree—Decree for enforcement of charge.

Held that under the Code of Civil Procedure (1908) a court is competent to set off a simple decree for recovery of money against a decree for recovery of money by enforcement of a charge.

THE facts of this case were as follows :—The applicants held a simple money decree against the opposite party. The latter held a decree against the applicants for the recovery of a certain sum of money by enforcement of a charge against their immovable property. The first mentioned decree was for a smaller amount than the latter. The executing court (Subordinate Judge of Cawnpore) set off the two decrees against each other and

* Civil Revision No. 72 of 1910.

recorded the first as discharged. The applicants filed a revision in the High Court.

1910

Babu Surendra Nath Sen (for Babu Durga Charan Banerji),
for the applicants :—

NAGAR MAL
v.
RAM CHAND.

The question is whether a court is competent to set off two decrees, one of which is a simple money decree and the other for the recovery of money by enforcement of a mortgage or charge. The rulings under section 246 of the old Code are conflicting. The present law on the subject of cross-decrees is embodied in order XXI, rules 18, 19 and 20 of the new Code. Rules 18 and 19 contain the general provisions as to set off. Rule 20, which is new, extends those provisions to the case of mortgage decrees. The evident intention of the Legislature is that where we have mortgage decrees the rules as to set-off shall also apply that is, two mortgage decrees may be set off against each other. Just as rule 18 deals with the class of decrees "for the payment of two sums of money" and provides rules for their setting off *inter se*, so rule 20 deals with the class of mortgage decrees and *their* setting off *inter se*. It is nowhere provided that a decree of the former class may be set off against one of the latter class. The two classes of decrees obviously differ in many respects. If it be said that a mortgage decree is also a money decree because a mortgage means a debt plus security, then there was no necessity for enacting rule 20. The use of the word "decrees" in the plural in rule 20 also indicates that the Legislature contemplated that the decrees should both be mortgage decrees.

Munshi Iswar Saran, for the opposite party, was not heard.

KNOX and KARAMAT HUSAIN, JJ. :—Nagar Mal and others, applicants, held a decree for money against Ram Chand. Ram Chand subsequent to the passing of that decree obtained a decree for money to be enforced by sale of property. The judgment-debtors were the holders of the decree first named. The petitioners took out execution of their decree. The court executing the decree set off the first decree against the other and marked the decree, dated the 16th of December, 1908, as discharged.

1910

NAGAR MAL
v.
RAM CHAND.

It is contended before us that this order setting off the two decrees against each other was an order passed without jurisdiction. The contention is that while the first decree is, in strict terms, a decree to recover a sum of money, the second decree is a decree for sale in enforcement of a charge against immovable property and that the Legislature in enacting rule 20 under order XXI meant to draw a distinct line of cleavage between the class of decrees contemplated in rules 18 and 19 and the class of decrees contemplated in rule 20. It has not been pointed out to us that anyone will be prejudiced by a decree of the kind contemplated by rule 20 being set off against a decree of the kind contemplated in rules 18 and 19 and *vice versa*. On the other hand, the practice of setting off decrees in this way is a very salutary procedure, and it is equally open to argument that rule 20 was expressly inserted in order to make it clear that though a decree might be a decree for sale in enforcement of a mortgage or charge, it might yet be dealt with on the same lines as where both the cross decrees are decrees to recover sums of money. At any rate in the present case we see no reason for interference, and we dismiss the application with costs.

Application dismissed.

APPELLATE CIVIL.

1910
November 5.

Before Mr. Justice Richards and Mr. Justice Griffin.

NATHU AND OTHERS (DEPENDANTS) v. KUNDAN LAL (PLAINTIFF).*

Hindu law—Mitakshara—Joint Hindu family—Debt—Legal necessity—Money borrowed to comply with a decree for pre-emption in favour of the father.

A decree for pre-emption, providing that the pre-emptor shall acquire the property if he pays the amount mentioned therein, but otherwise his suit will be dismissed, is a debt such as will support a bond given by the father of a joint Hindu family to raise money for its satisfaction.

THIS was a suit upon a mortgage bond of joint family property executed by the father of the family for the purpose of raising money to fulfil the conditions of a decree for pre-emption passed

* Second Appeal No. 202 of 1910, from a decree of D. L. Johnston, Additional Judge of Meerut, dated the 18th of December, 1909, reversing a decree of Muhammad Husain, Additional Subordinate Judge of Meerut, dated the 16th of August 1909.