

months the amount will be realized by sale of the share of the appellants in the property specified in the mortgage of 1883. Future interest at six per cent. per annum is allowed. Costs in all courts in proportion to success and failure.

Decree modified.

1913

JALSHAR
RAI
v.
ANBUT RAI.

Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.

JAMNA PRASAD RAUT (JUDGEMENT-DEBTOR) v. RAGHUNATH PRASAD
AND OTHERS (DECREE-HOLDERS.)*

1913
March, 11.

Civil Procedure Code (1908), section 60 (c)—Execution of decree—Attachment—Objection that attached property is the house of an agriculturist—Judgement-debtor both zamindar and agriculturist—Burden of proof.

Where a judgement-debtor whose house was attached in execution of a decree took objection that the house was the house of an agriculturist to which section 60 (c) of the Code of Civil Procedure applied and was not susceptible of attachment, and it was found that the judgement-debtor was both an agriculturist and a zamindar :

Held that it lay on the judgement-debtor to prove that the house was strictly of the nature contemplated by the provisions of section 60 (c).

IN this case in execution of a simple money decree against one Jamna Prasad Raut a house belonging to him in a certain village was attached. The judgement-debtor took objection that the house was the house of an agriculturist within the meaning of section 60 (c) of the Code of Civil Procedure and could not be attached. This objection was overruled on the finding that the house was not in fact occupied by the judgement-debtor (who was both a zamindar and an agriculturist) as an agriculturist. The judgement-debtor appealed to the High Court.

The Hon'ble Dr. Tej Bahadur Sapru and Munshi Haribans Sahai, for the appellant.

Munshi Mangal Prasad Bhurgava (with him Babu Jogindra Nath Chaudhri), for the respondent.

TUDBALL and MUHAMMAD RAFIQ JJ:—The appellant is a judgement-debtor whose house in a certain village has been attached in the execution of a simple money decree. Two portions of the same house have already been attached and sold, and the remainder, which is described as a six anna share, has now been attached. The judgement-debtor came forward and objected that he was an agriculturist and therefore his house was exempt from attachment

* First Appeal No. 804 of 1912, from a decree of Harbandhan Lal, First Additional Subordinate Judge of Gorakhpur, dated the 1st of June, 1912.

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JAYNA
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PRASAD.

and sale. The court below has decided that the house is not occupied by him as an agriculturist and is therefore not exempt from sale. He has come here on appeal. The question is whether or not he has produced evidence to show that he is an agriculturist and occupied the house as such. The appellant was formerly the zamindar of the village, but his interest as such has been sold and he now holds his *sir* land as an exproprietary holding. He lives in another village and holds zamindari in several villages. He has produced two witnesses who state that his cattle and implements are kept in the house in dispute. The appellant being both a zamindar and a cultivator of land, the question arises as to what is his main source of income and whether or not he is an agriculturist within the strict sense of the term and occupies the house as such. The burden of proof lay on him, and it was for him to show to the court that his main source of income was cultivation and not zamindari and that he was in the strict sense of the term an agriculturist. He produced two witnesses, and in our opinion their evidence is not sufficient to prove that his main source of income is agriculture and that he is an agriculturist within the strict sense of the term. As a matter of fact in the past he held considerable zamindari, though he has lost some of it by reason of decrees obtained against him. In this case it has not been satisfactorily proved that he is an agriculturist within the strict meaning of the term. The appeal fails and is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Sir Harry Griffin and Mr. Justice Chamier.

RAGHUNANDAN PRASAD (PLAINTIFF) v. SHEO PRASAD (DEFENDANT).
Act No. XV of 1883 (*North-Western Provinces and Oudh Municipalities Act*), section 10—Act (Local) No. I of 1900 (*United Provinces Municipalities Act*), section 187—Municipal Board—Election—Suit to set aside election—Jurisdiction of Civil Court—Limitation—Act No. IX of 1908 (*Indian Limitation Act*), schedule 1, article 120.

Held that an order of the Government directing that a particular municipal election held in the year 1911 should be conducted according to certain rules passed in 1884, and not according to the rules passed *in pari materia* in 1910, which superseded those of 1884, was *ultra vires*, and that, inasmuch as the

* Second Appeal No. 1012 of 1912 from a decree of H. N. Wright, District Judge of Bareilly, dated the 18th of June, 1912, confirming a decree of Baijnath Das, Officiating Subordinate Judge of Bareilly, dated the 12th of July, 1911.

1913

March, 11.