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bond and also purported, though ineffectually, to create a charge by deposit of a *pattah* relating to immovable property. Interest was paid upon this bond up to the 13th of April, 1903, and on the 18th of August, 1903, defendants 1 to 4 executed a registered instrument of transfer of all their property, movable, and immovable, to defendant No. 5 for a sum of Rs. 2,000, becoming thereby, as the plaintiff describes it, 'rightless.' This Rs. 2,000 was not all paid in cash, but there was the provision and declaration in the *kabala* that out of this consideration money of Rs. 2,000, amongst other things, the sum of Rs. 330 due to the plaintiff should be paid by the defendant No. 5. On the very same day there was an arrangement between the plaintiff and defendant No. 5, under which the liability of defendant No. 5 under the transfer was acknowledged and accepted, and either then or in connection therewith this *pattah* was handed over to defendant No. 5."

It is clear that in all these cases the plaintiff had an "equity" which would always have been enforced by an English Court of Equity. The facts of the present case, as already pointed out, are quite different. We think the view taken by the learned Judge of this Court was correct and we dismiss the appeal with costs.

*Appeal dismissed*

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December, 3.

*Before Mr. Justice Chamier and Mr. Justice Piggott.*

RAM DULARI (PLAINTIFF) v. BALAK RAM AND ANOTHER (DEFENDANTS) \*  
*Execution of decree—Attachment of undivided share in house—Conditional decree for partition pending attachment—Purchase of judgement-debtor's share by decree-holder—Decree-holder not entitled to benefit of decree for partition.*

A decree-holder attached in execution of his decree his judgement-debtor's undivided share in a house. Pending the attachment the judgement-debtor sued for partition of the house and obtained a decree for separate possession of her share conditional on payment of Rs. 237 into court. The decree-holder then brought to sale the share allotted to his judgement-debtor, and, having paid into court the Rs. 237 which the judgement-debtor had omitted to pay, asked for delivery of possession of the specific share purchased.

*Held* that, whether or not the decree-holder might ultimately be entitled to the full benefit of the decree for partition in favour of his judgement-debtor on payment of the sum of Rs. 237, all he acquired by his purchase was a right

\* Second Appeal No. 134 of 1914, from a decree of F. S. Tabor, District Judge of Shahjahanpur, dated the 12th of November, 1913, confirming a decree of Gokul Prasad, Subordinate Judge of Shahjahanpur, dated the 13th of May, 1913.

to be put into possession of the undivided share to which his judgement-debtor was entitled.

THE facts of this case were as follows :—

One Balak Ram held a Munsif's Court decree for money against Musammat Sundar. In execution thereof he attached and advertised for sale her share ( $\frac{1}{6}$ ) in a certain house. Subsequently, on the 14th of September, 1908, Musammat Sundar brought a suit in the Subordinate Judge's court against Musammat Ram Dulari and others for partition of her  $\frac{1}{6}$ th share in the house. On the 31st of March, 1909, a preliminary decree for partition was passed awarding to her a specific  $\frac{1}{6}$ th share (being lot No. 2) conditionally upon her paying into court the sum of Rs. 237-2-0. Musammat Sundar did not pay in the amount and did not execute the decree. On the 20th of July, 1911, Balak Ram, in execution of his above mentioned decree brought to sale, and himself purchased the specific share of the house allotted to Musammat Sundar under the partition decree. On the 3rd of February, 1912, he applied to the Munsif for possession of the specific share, and on the 12th of February, 1912, he deposited Rs. 237-2-0 in the court of the Subordinate Judge, although he had not obtained an assignment of the decree from Musammat Sundar. Musammat Ram Dulari objected to possession being granted to him, but the Munsif overruled her objection and granted possession. Thereupon Musammat Ram Dulari brought a suit for establishment of her ownership and possession of the house and for a declaration that Balak Ram had no right to recover possession of the house by virtue of his purchase. The suit was dismissed by both the courts below. The plaintiff appealed.

Babu *Sarat Chandra Chaudhri*, for the appellant :—

Balak Ram is not entitled to specific one-sixth share. He purchased only an undivided sixth share. If Musammat Sundar had deposited the sum of Rs. 237-2-0 and executed the partition decree she would have perfected her title to the specific sixth share which had been allotted to her. By purchasing the right, title and interest of Musammat Sundar, Balak Ram did not derive a right to execute the decree obtained by her. Unless he gets an assignment of the decree from her and executes it he cannot obtain any benefit under it. The money was deposited by

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him as a mere stranger. Merely becoming the representative of Musammatt Sundar would not entitle him to go and take possession of property which had been allotted to her by a decree of a court other than the Munsif, and which decree she has never proceeded to execute.

Mr. A. P. Dube (with him Munshi *Benode Behari*), for the respondent:—

When Balak Ram attached the share of Musammatt Sundar in the house it was no doubt an undivided share. But when she filed a suit for her specific share and it was decreed, the share, which had been attached by Balak Ram, became specific, subject only to the condition of Rs. 237-2-0 being paid into court. By virtue of the partition decree the right, title and interest of Musammatt Sundar became a specific share subject to the payment of the money. Balak Ram purchased all her rights, that is, this specific share subject to that condition which has since been fulfilled. Therefore he is entitled to the specific share. In no case is the plaintiff entitled to a declaration of ownership and possession of the whole house. Balak Ram has purchased at least an undivided sixth. Musammatt Sundar is a party to this case; she does not complain. The plaintiff's objection is only technical; she has to give up a sixth share in any case.

CHAMIER and PIGGOTT, JJ.—The first respondent obtained in a Munsif's court a decree against the second respondent, in execution of which, some time before the end of March, 1908, he attached the second respondent's one-sixth share in a house. In September, 1908, while the share was under attachment, she brought a suit in a Subordinate Judge's court against the appellant and others for partition and separate possession of her share, and in March, 1909, she obtained a decree, which was subject to a condition that she should pay Rs. 237 into court. She has never paid in the money, and consequently the decree has not been executed. In July, 1911, the first respondent brought to sale in execution of his decree and purchased himself the specific share allotted to the second respondent by the decree in the partition suit. In February, 1912, he paid Rs. 237 into the court of the Subordinate Judge and immediately afterwards he applied to the Munsif for delivery of possession of the specific share purchased by

him. The appellant objected, but her objection was disallowed, and she then brought the present suit claiming a declaration that she is owner and in possession of the house and that the first respondent is not entitled to obtain possession of the house by virtue of his purchase at the execution sale. The first court dismissed the suit on a ground that is clearly untenable. On appeal the District Judge confirmed the dismissal of the suit upon the ground that, although the second respondent was not entitled to a specific share in the house till she paid the sum of Rs. 237 into court, and therefore no specific share passed to the first respondent at the execution sale, yet the latter must have acquired the right, title and interest of Musammat Sundar, and was entitled to stand in her shoes, and having paid the required sum into court before execution of the decree became time-barred, was entitled to execute the decree obtained by her. The appellant is obviously not entitled to the relief claimed in the plaint, for at the date of the suit she certainly was not the sole owner of the house and the first respondent had never attempted to get possession of the whole house, but the facts are all before us and we may properly give her such relief as she may be entitled to. It appears to us that what passed to the first respondent at the execution sale was the right, title and interest of Musammat Sundar to and in an undivided one-sixth share, even though it may have been wrongly described as a specific or separate share in the house, and the first respondent was entitled to go to the Munsif and get himself placed in possession of the undivided share. It is not for us to decide whether before or after obtaining possession of the share in this way the first respondent was or is entitled to go to the court of the Subordinate Judge and execute the decree obtained by Musammat Sundar. That is a matter for the Subordinate Judge to decide. It is quite clear that the first respondent was not, by virtue only of his purchase, entitled to be placed by the Munsif in separate possession of that portion of the house which would have passed into the possession of Musammat Sundar if she had executed her decree, and we think that the appellant was and is entitled to a declaration that the first respondent is not entitled to separate possession of any specific portion of the house by virtue only of his purchase at the execution sale. We allow

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the appeal and make a declaration to this effect. The parties will pay their own costs throughout.

*Appeal decreed.*

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December, 5.

*Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.*

MUHAMMAD WALI KHAN (PLAINTIFF) v. MUHAMMAD MOHI-UD-DIN KHAN AND OTHERS (DEFENDANTS) \*

*Civil Procedure Code (1908), section 109 (c)—Appeal to His Majesty in Council—Practice—Grounds for granting certificate in case of connected appeals.*

It is a good ground for granting a certificate of fitness for appeal to His Majesty in Council under section 109 (c) of the Code of Civil Procedure that the case in which leave to appeal is sought is an appeal from the same decree and involving the same questions as another appeal in respect of which the same applicant has a right of appeal under sections 109 and 110 of the Code.

A SUIT was filed in the court of the Subordinate Judge of Cawnpore by one Muhammad Wali Khan for possession of immovable property and mesne profits, the suit being valued at about Rs. 35,000. The claim was partly decreed and partly dismissed. From this decree the plaintiff appealed to the High Court (F. A. No. 156 of 1910) as to the portion of the claim which had been dismissed, and some of the defendants appealed (F. A. No. 186 of 1910) as to the portion decreed.

In the plaintiff's appeal the High Court agreed with the court below and dismissed it. The defendants' appeal on the other hand was allowed.

In each case the plaintiff applied for leave to appeal to the Privy Council; but whereas in First Appeal No. 186 of 1910 the case fulfilled the requirements of section 110 of the Code of Civil Procedure, in First Appeal No. 156 of 1910, although the value was sufficient, the High Court had agreed with the court below.

The Hon'ble Mr. *Abdul Raoof*, for the appellant.

The Hon'ble Dr. *Sundar Lal* (The Hon'ble Dr. *Tej Bahadur Sapru*, with him), for the respondent.

RICHARDS, C. J., and BANERJI, J.—The value of the subject matter of the suit out of which this appeal arises and of the proposed appeal to His Majesty in Council exceeds Rs. 10,000, but this Court affirmed the decree of the court of first instance.

\* Privy Council Appeal No. 28 of 1913.