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the plaintiff was in any way debarred from claiming damages in a Civil Court, on the simple allegation that the defendants had taken advantage of their position as tenants of the land in order to cut down and appropriate to themselves two trees which were the property of the plaintiff. I have been referred in argument to a number of rulings supposed to have some bearing upon the question in dispute; but I do not think it necessary to discuss them here. Most of them seem to me to have no bearing upon the particular point to be decided in this case. The only one about which I should not be prepared to say this is the decision of a single Judge of this Court in *Lachman Das v. Mohan Singh* (1). That decision, so far as the question of jurisdiction is concerned, is entirely against the defendants. I take the liberty of saying with all respect to the learned Judge of this Court who decided that case, that he has gone somewhat further in the way of affirming the jurisdiction of the Civil Court to deal with matters of this sort than I should myself be prepared to do, at any rate without further argument; but as regards the case now before me I find no good reason for holding that the plaintiff could have obtained appropriate relief for the loss which he has suffered by way of any suit or application brought or made before a Revenue Court. The jurisdiction of the learned Judge of the Court of Small Causes was therefore not barred and I dismiss this application with costs.

Application dismissed.

APPELLATE CIVIL.

Before Justice Sir Pramada Charan Banerji and Mr. Justice Ryves.

GOSWAMI GORDHAN LALJI AND OTHERS (JUDGMENT-DEBTORS) v.

GOSWAMI MAKSUDAN BALLABE (DROBER-HOLDER).*

Civil Procedure Code (1908), order XXI, rule 32—Execution of decree—Decree declaring rights of certain parties and forbidding interference therewith by other parties to suit—Mode of enforcing such decrees.

A decree was passed declaring the rights of certain parties to the suit to conduct certain religious ceremonies and enjoining on certain other parties to

* First Appeal No. 112 of 1918, from a decree of H. J. Collister, Subordinate Judge of Muttra, dated the 14th of March, 1918.

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the suit to refrain from interfering with the celebration of the said ceremonies by the parties in whose favour the decree was passed.

Held that it was not competent to the court passing such decree to secure obedience thereto by directing the Superintendent of Police to see that the ceremonies were carried out and to prevent interference therewith, nor was it competent to the court to appoint a commissioner to see that the terms of the decree were given effect to.

THE facts of this case are fully stated in the judgment of the Court.

Pandit *Shiam Krishna Dar*, for the appellants.

The Hon'ble *Munshi Narayan Prasad Ashthana*, for the respondent.

BANERJI and RYVES, JJ.:— This appeal arises out of an application for the execution of a decree passed on the 17th of December, 1906, in a suit brought by one Goswami Manohar Lal against a number of defendants, of whom the appellant, Piari Lal, is one. Certain persons who were alleged to have the same rights as the plaintiffs were made defendants of the third party, one of these defendants being the present applicant for execution, Goswami Maksudan Ballabh. A decree was made by the court against all the defendants of the first and the second party, with the exception of one Kishori Lal, declaring that the plaintiff and the defendants of the third party were entitled to perform the "*Singar Arti*" ceremony in a certain temple both on ordinary and festive occasions. The decree also ordered a perpetual injunction to issue restraining the defendants of the first and second parties from obstructing the plaintiff and the defendants third party from performing the duties of the office claimed by them. The present application was made by Goswami Maksudan Ballabh, who is one of the defendants of the third party against Goswami Gobardhan Lalji, the grandson of Prem Lal, who was defendant No. 1, and Goshain Girdhar Lalji and Goshain Gordhan Lalji, the sons of Goshain Munna Lal, who was one of the defendants of the second party and Piari Lalji who, as we have said above, was also a defendant of the second party. It is stated on behalf of the decree-holder that these defendants are now interfering with the performance of the duties appertaining to the office which was claimed in the suit and which was decreed to the plaintiff and defendants of the third

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party. Their prayer, as contained in the application, is that the decree may be enforced through the Superintendent of Police of Muttra in this way that on the dates mentioned in the application he (the Superintendent of Police) may have the "Arti" performed by the decree-holder, applicant, and that the defendants may be directed not to interfere with the performance of those duties. The application was opposed on several grounds, but the objections were disallowed and the application as made was granted by the court below. In this appeal, which has been preferred by the judgment-debtors, the first contention raised is that Goswami Maksudan Ballabh is not entitled to apply for execution as he was not one of the plaintiffs to the suit. This objection was raised in the court below and was, we think, rightly disallowed. The decree was made in favour not only of Manohar Lal but also of the defendants of the third party declaring their right to perform the duties of the office claimed by them at certain hours every day and also on festive occasions. The decree thus declared the right of, amongst others, the present applicant Maksudan Ballabh and the injunction decreed was also an injunction in his favour. He is, therefore, entitled to maintain the present application.

The next contention put forward on behalf of the appellants is that the decree was personal to the persons in whose favour it was made and could only be enforced against the individuals who were defendants to the suit and not against persons who are their legal representatives. This contention also is in our opinion without force. It appears that the suit was brought on the basis of a right which the plaintiffs claimed as descendants of one of the founders of the temple and that the defendants were also made parties as such descendants. The plaintiffs claimed to have the right to perform certain offices which the defendants contended they themselves had a right to perform. So that the decree related to a hereditary office which the plaintiffs claimed and in regard to which their claim was resisted by the defendants. The injunction was also granted against them, not as individuals, but as persons who claimed a right as descendants of the original founder of the temple. The appellants, who, after the death of some of the defendants in the former suit, have taken their

place—or claim to have taken their place—are thus persons against whom the decree may properly be executed so far as the injunction goes. We may mention that this plea was not put forward in the court below and it therefore did not become necessary for that court to consider it.

The third contention is that the application is time-barred. As the decree was one for a perpetual injunction, limitation would run from the date of breach of the injunction, that is, from the date on which the defendants disobeyed the injunction. That date was within three years of the present application. Consequently no question of limitation arises in the present case, as held by the court below.

It is lastly urged that the court below was wrong in ordering the Superintendent of Police of Muttra to see that the “*Arti*” was performed by Goswami Maksudan Ballabh and that the defendants offered no obstruction. So far as this part of the prayer in the application for execution is concerned we do not think that the court below ought to have granted it. It had no power under the Code of Civil Procedure to order the police to interfere in the matter. There being a decree for a perpetual injunction against the defendants or those whom they represent, it was the duty of the defendants to carry out the injunction, that is to say, to refrain from offering any obstruction to the performance of the office which was decreed to the decree-holder. If they disobeyed the order of the court they were liable to the penalties mentioned in order XXI, rule 32, of the Code, but the court could not order the police to see that the decree-holders performed the duties of their office without interference on the part of the defendants. If a breach of the peace was apprehended, that was a matter for the Magistrate and the police and not for the Civil Court. We accordingly set aside that portion of the lower court’s order which directs the Superintendent of Police to order the Sub-Inspector of Bindraban to have the applicant Maksudan Ballabh perform “*Singar Arti*” in the temple.

We are also of opinion that the court had no power to appoint a commissioner to see that the decree-holder performed without obstruction the duties appertaining to his office. This portion of the lower court’s order, which was passed on a subsequent date,

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should also be set aside. In our opinion clause (5) of rule 32 does not authorize the court to make these orders, and provides for a different state of things.

We accordingly vary the order of the court below by directing that an order do issue to the defendants appellants forbidding them to interfere with the performance of the duties of the decree-holder, namely, "*Singar Arti*" every day and on festive days in the temple of Radha Ballabhji. If the defendants appellants fail to obey the injunction it will be time for the decree-holder to make a proper application in the terms of order XXI, rule 32. We direct the parties to bear their own costs of this appeal.

Decree varied.

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June, 5.

Before Sir George Knox, Acting Chief Justice, and Justice Sir Pramada Charan Banerji.

ANANDGIR (DEFENDANT) v. SRI NIWAS (PLAINTIFF) *

Act (Local) No. II of 1901 (Agra Tenancy Act), section 198—Order of remand—Appeal—Preliminary and final decrees.

A suit was brought in a Court of Revenue for a declaration that the plaintiff was the proprietor of certain *muafi* land. The court of first instance dismissed the suit. The lower appellate court set aside that decree and allowed the appeal to the extent that it held the plaintiff entitled to be declared a rent-free grantee of so much of the land as was entered in his name. It then added that "the suit be remanded to the lower court for determination of the revenue payable by the plaintiff appellant." *Held* that the order being one of remand no second appeal lay to the High Court; and as there was no provision in the Tenancy Act about preliminary or final decrees, the order could not be appealed against as a preliminary decree.

THE plaintiff brought a suit in the court of an Assistant Collector, first class, to be declared proprietor of certain *muafi* land under section 158 of the Tenancy Act. The main plea in defence was that the *muafi* had been resumed long ago, and that the plaintiff was only an occupancy tenant of the land. The Assistant Collector found against the plaintiff and dismissed his suit. On appeal the District Judge found that the plaintiff had become proprietor; the decree of the Assistant Collector was,

* Second Appeal No. 1544 of 1916, from a decree of B. C. Forbes, District Judge of Cawnpore, dated the 28th August, 1916, modifying a decree of Guruswak Upadhya, Assistant Collector, first class, of Fatehpur, dated the 13th of March, 1916.