

Before Mr. Justice Walsh and Mr. Justice Dalal.

BABU LAL (DECREE-HOLDER) *v.* JANAK DULARI AND
ANOTHER (JUDGEMENT-DEBTORS).^{*}

1926
March, 9.

*Civil Procedure Code, section 47—Execution of decree—
Question whether alleged legal representative does or does
not occupy that capacity—Execution court entitled to
decide.*

The provisions of section 47 of the present Code of Civil Procedure make it quite clear that the question whether or not an alleged legal representative does or does not occupy that capacity so as to be bound by the decree is one to be decided in the execution court. The question raised by such cases is, what is the true interpretation of the decree, and in order to decide that question it is necessary to investigate, in the case of a Hindu widow, the circumstances under which the contract was entered into upon which the decree was based. *Liladhar v. Chaturbhuj* (1), *Khuman Singh v. Makhan Singh* (2) and *Jagar Nath v. Sheo Ghulam* (3) referred to.

THE facts of this case were as follows :—

One Maheshi Lal left a widow surviving him, who executed two mortgages under circumstances which are not known, and which have never been investigated upon the question whether the loan taken by the widow was either for legal necessity, or for some other purpose which by Hindu law binds the estate. The mortgagee, shortly before the death of the widow, sued her and obtained a decree for sale. On the death of the widow, or some little time afterwards, he applied for execution, and sought to join, or bring on the record, two daughters of the deceased widow and of their father, the deceased Maheshi Lal, on the ground that they were the legal representatives of the deceased widow. They objected. Their objection took the obvious form that they were not the legal representatives of their deceased mother

* First Appeal No. 142 of 1925, from an order of Sarup Narain, Second Subordinate Judge of Cawnpore, dated the 18th of May, 1925.

(1) (1869) I.L.R., 21 All., 277.

(2) (1908) 5 A.L.J., 550.

(3) (1908) I.L.R., 31 All., 45.

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because there was nothing to represent. They were the legal representatives, or reversioners, of their deceased father and the decree against the widow could have no more binding effect than the mortgage contract which she had entered into in her capacity as a Hindu widow with a Hindu widow's estate. The Munsif rejected this objection, taking the view that they were the legal representatives of the widow and that in questioning whether the decree was binding upon the estate in the hands of the reversioners, they were seeking to go behind the decree in the execution court. On an appeal brought to the Subordinate Judge this view was overruled, the Subordinate Judge holding that in substance the decision of the first court really begged the whole question, and that the daughters were entitled to contest the view in the execution court that they were legal representatives of their deceased mother, inasmuch as it had never been decided whether the mortgage, or the decree based thereon, bound the whole estate, or anything more than the interest of the Hindu widow. He accordingly remitted the case to enable that question to be decided. Against this order the decree-holder appealed.

Munshi *Binode Bihari Lal*, for the appellant.

Dr. *Kailas Nath Katju*, for the respondent.

The judgement of the Court (WALSH and DALAL, JJ.), after setting forth the facts as above, thus continued :—

With regard to the contention that the daughters are seeking to go behind the decree it should be observed that this is not the case. What they are seeking to do is to interpret the decree, or, in other words, to ascertain whether the decree is such as to bind the whole estate, or whether it only bound the interest

of the widow. That question has never been determined. For one reason, the reversioners were not made parties to the suit in which the decree was passed, and unless the widow herself chose to raise the question which she was not very likely to do, it would not arise at all, and therefore the fundamental question, namely, whether the contract was such as to bind the whole estate or not when it was originally made by the widow, has never been determined, and it would be contrary to all principles of law and justice if the courts were to give a wider interpretation and operation to a decree than the contract upon which it was based.

The appellant before us relied upon the decision in *Liladhar v. Chaturbhuj* (1) but the decision in that case turned upon a very narrow question. The objectors in that case disputed their liability as judgment-debtors, not having resisted an order bringing them upon the record as legal representatives of the deceased judgment-debtor, and the case decides nothing more than the well-known principle that a judgment-debtor, or his legal representative, cannot go behind the decree, or dispute the validity of a contract upon which a decree has been passed. That authority was clearly explained in *Khuman Singh v. Makhan Singh* (2), a case which certainly should have been, but which appears not to have been, published in the authorized Law Reports, but it should be observed with regard both to this case, and to the preceding one to which we have already referred, that these decisions were under the old law as provided by section 244 of the Code of 1882 and therefore have little or no application to the legal position to-day. The opinion was expressed in those cases, and it was

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(1) (1889) I.L.R., 21 All., 277.

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definitely held in *Jagar Nath Singh v. Sheo Ghulam* (1), that a suit might be brought by a reversioner disputing the operation of the decree where it was contended that it bound the whole estate, and that the old section 244 constituted no bar. But the old section 244 has been altered and the provisions of section 47 of the present Code make it quite clear that the question whether or not an alleged legal representative does or does not occupy that capacity so as to be bound by the decree, is one which is to be decided in the execution court. That is precisely the question raised by this appeal. We repeat that it does not offend against the principle that an execution court cannot go behind the decree. The question raised in this and cognate cases is, what is the true interpretation of the decree, and what is its operative effect, and in order to decide that question it is necessary to investigate, in the case of a Hindu widow, the circumstances under which the contract was entered into upon which the decree is based.

We, therefore, dismiss the appeal with costs.

Appeal dismissed.

REVISIONAL CIVIL.

Before Mr. Justice Walsh and Mr. Justice Dalal.

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March, 16.

RAM SAHAI (APPLICANT) v. MADAN LAL KANHAIYA
LAL AND OTHERS (OPPOSITE PARTIES).*

Civil Procedure Code, section 115; order XXI, rule 16—Execution of decree—Assignment by way of mortgage—Revision—Subordinate court following a ruling that has no application.

Although a court subordinate to a High Court is bound to follow the rulings of such High Court, where they are applicable, yet where a subordinate court gave an entirely

* Civil Revision No. 96 of 1925.
(1) (1908) I.L.R., 31 All., 45.