

for an offence under section 176 based on the same facts, the High Court held that he could not be so prosecuted as the case did not fall under sub-section (1) of section 235 of the Criminal Procedure Code, but under sub-section (2) of that section.

I direct, therefore, that the proceedings against the applicant under section 211 of the Indian Penal Code be quashed and Babu Lal's complaint dismissed.

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NATH
v.
BABU LAL.

APPELLATE CIVIL.

Before Mr. Justice Mukerji and Mr. Justice Young.

CHANDU MAL (DEFENDANT) v. DARBARI LAL
(PLAINTIFF).*

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May, 10.

Act (Local) No. III of 1901 (Land Revenue Act), sections 175, 233 (l)—Applicable to taxes realizable as land revenue—Income-tax—Sale for realization—Suit for setting aside sale on the ground of fraud.

Section 233 (l) of the Land Revenue Act covers the case of a sale of immovable property for realization of taxes and dues which are recoverable as if they were arrears of land revenue. Accordingly, a suit to set aside on the ground of fraud a sale of immovable property for the realization of income-tax and irrigation dues is maintainable.

Dr. M. L. Agarwala and Messrs. Kamala Kant Verma and Hanuman Prasad Agarwal, for the appellant.

Messrs. Girdhari Lal Agarwala, Indu Bhushan Banerji and Panna Lal, for the respondents.

MUKERJI and YOUNG, JJ. :—The respondent, Darbari Lal, was assessed with income-tax to the amount of about Rs. 83. He also owed, it appears, a small amount of money on account of irrigation dues. Both

*Second Appeal No. 89 of 1927, from a decree of J. Allsop, District Judge of Aligarh, dated the 13th of May 1926, confirming a decree of Piarey Lal, Subordinate Judge of Aligarh, dated the 2nd of January, 1926.

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the taxes were due for the year 1923. Certain immovable properties of his, namely four shops, were attached and sold to realize the two taxes. They were sold on the 17th of March, 1924, and were purchased by the appellant before us, Lala Chanda Lal *alias* Chandu Mal. Darbari Lal thereupon brought the suit out of which this appeal has arisen to have the sale set aside on the ground that the sale was brought about by means of fraud to which the appellant was a party.

The suit succeeded in the court of first instance and an appeal by the auction-purchaser, Lala Chanda Lal, was dismissed, but on a ground which will be presently stated. The auction-purchaser has now come up in second appeal, and his contention is that the ground on which the learned Judge has dismissed his appeal was untenable and the learned Judge should have tried the question of fraud.

It appears that the learned appellate Judge was of opinion that the sale that was held was a nullity, inasmuch as there was no previous sanction obtained from the Collector and there was no confirmation of the sale by the Commissioner.

The argument on behalf of the appellant is that a revenue sale, or sale for recovery of a tax which may be recovered as if the same were land revenue, cannot be challenged on any ground other than the one laid down in clause (l) of section 233 of the Land Revenue Act of 1901. Clause (l) permits a party to maintain a claim to set aside a sale for arrear of revenue on the ground mentioned in section 175. Apparently, the plaintiff's case was based on section 175. Clause (m) of section 233 shuts out "claims connected with, or arising out of the collection of revenue, or on account of revenue, or on account of a sum which is by this or any other Act realizable as revenue". The language

of this clause (*m*) is very very wide and would shut out any claim for setting aside a sale, made by the plaintiff respondent, on the ground of want of jurisdiction on the part of the revenue authorities.

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In the course of the arguments here the question arose whether clause (*l*) would cover the sale of property for recovery of a tax which was other than the land revenue. We should think that it would cover a case like the present. Under the Income-Tax Act, section 46, income-tax may be realized as if it were an arrear of revenue. Similarly, under the Canal and Drainage Act the arrears may be recovered as land revenue. Section 175 of the Land Revenue Act provides an exception in the case of land revenue, and apparently the same rule would apply where any other tax could be realized as land revenue. There seems, therefore, to be no bar to the maintenance of the suit on the ground of fraud as provided in section 175.

In the result we allow the appeal, set aside the decree of the court below and remand the appeal to that court for disposal on the merits.

Before Mr. Justice Mukerji and Mr. Justice Young.

ASA RAM AND ANOTHER (PLAINTIFFS) v. KARAM SINGH
AND OTHERS (DEFENDANTS).*

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May, 18.

Hindu law—Sons renewing father's time-barred debt—Liability of sons to the extent of family property—Act No. IX of 1872 (Contract Act), section 25 (3).

Where a simple money bond was executed by Hindu sons in order to pay off a time-barred debt due from their father, it was held that the bond could be enforced against the sons only to the extent of the family property and not against them personally.

*Second Appeal No. 443 of 1927, from a decree of J. N. Dikshit, Additional Subordinate Judge of Saharanpur, dated the 15th of November, 1926, reversing a decree of Sheo Narain Vaish, Munsif of Deoband, dated the 15th of December, 1925.