

REVISIONAL CIVIL

Before Mr. Justice Thom

1936
October, 21

BINDRABAN AND ANOTHER (PLAINTIFFS) v. CHHOTY LAL
(DEFENDANT)*

U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), section 3(2)—Declaring a charge on defendant's immovable property while passing an instalment decree—Small Cause Court—Jurisdiction to create charge—Civil Procedure Code, section 7.

Under section 3(2) of the U. P. Agriculturists' Relief Act, 1934, the court may, while passing an instalment decree against an agriculturist, attach his immovable property or declare a charge on it in respect of the amount decreed. If such court is a small cause court, then by section 7 of the Civil Procedure Code it has no jurisdiction to execute decrees against immovable property and can not therefore attach immovable property, as attachment would be a step in execution; but it has jurisdiction to declare a charge on the immovable property, which is not a step in execution.

Mr. J. C. Mukerji, for the applicants.

Mr. Baleshwar Prasad, for the opposite party.

THOM, J.:—This is an application in revision under section 25 of the Small Cause Courts Act. The judgment-debtor is an agriculturist. The decree-holder moved the court to create a charge on the immovable property of the judgment-debtor in virtue of the terms of section 3, sub-section (2) of the U. P. Agriculturists' Relief Act, 1934. The learned Judge of the small cause court refused the applicants' prayer, holding that a charge cannot be created on immovable property in a small cause court case.

Sub-section (2) of section 3 of the U. P. Agriculturists' Relief Act is in the following terms: "The court may, at the time of passing an instalment decree against an agriculturist, either attach his immovable property, if any, or declare a charge on such property within the

meaning of section 100 of the Transfer of Property Act of 1882 to the extent of the amount decreed.”

By section 7 of the Code of Civil Procedure the small cause court has no jurisdiction to execute decrees against immovable property. The creation of a charge upon the property, however, is something entirely different from the execution of a decree against the property. The attachment of immovable property would be a step in execution. The creation of a charge is not a step in execution and it is clear therefore in my judgment that a small cause court, though it has no jurisdiction to attach an immovable property, has jurisdiction to create a charge thereon.

In the result the application is allowed and the order of the small cause court is set aside. The record will be returned to the small cause court with a direction that it should dispose of the application for the creation of a charge on the defendant's immovable property according to law. The applicant is entitled to his costs in this application.

APPELLATE CRIMINAL

*Before Sir Shah Muhammad Sulaiman, Chief Justice, and
Mr. Justice Niamat-ullah*

EMPEROR *v.* MANJIA AND OTHERS*

Criminal Procedure Code, sections 306, 307—Jury's verdict of guilty—Judge doubtful and inclined to give the benefit of doubt to accused—Proper procedure—Judge should not convict but should disagree with verdict and refer the case to High Court—Appeal from conviction in such case—Powers of appellate court—Criminal Procedure Code, sections 423(2) and 561A.

Where the Sessions Judge, at a jury trial, is doubtful about the guilt of the accused and is distinctly of the opinion that the benefit of the doubt should be given to him, then if the jury returns a verdict of guilty, the Judge is disagreeing with

*Criminal Appeal No. 309 of 1936, from an order of S. Iftikhar Husain, First Additional Sessions Judge of Cawnpore, dated the 24th of March, 1936.

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