

Before Mr. Justice Straight and Mr. Justice Mahmood.

1882
June 19.

WALI MUHAMMAD (DECREE-HOLDER) v. TURAB ALI (JUDGMENT-DEBTOR). *

Execution of decree—Decree for sale of immoveable property,—Purchase of property by decree-holder's brother—Execution of decree against judgment debtor's person—Equity, justice, and good conscience.

W, the holder of a decree for money, which ordered the sale of certain immoveable property in satisfaction of its amount, applied for execution of the decree, praying for the arrest of the judgment-debtor. W's brother had previously purchased such property at a sale in execution of another decree against the judgment-debtor, paying a small amount for it, in consequence of the existence of his brother's decree.

Held that, under these circumstances, applying equity, the decree should in the first place be executed against such property, and not against the person of the judgment-debtor.

THE appellant in this case held a decree for the payment of money against the respondent, which directed the sale of certain immoveable property in satisfaction of the decree. This property was put up for sale in execution of another decree against the respondent, and was purchased by the appellant's brother for a very small amount, owing to the existence of his decree. Subsequently to this purchase the appellant applied for execution of his decree, praying for the arrest of the respondent. The Court of first instance, for reasons which it is not necessary to state, refused the application. On appeal the lower appellate Court affirmed the order of the first Court on the ground that, under the circumstances mentioned above, the decree ought to be executed against the property which it directed to be sold, and which the appellant's brother had purchased, and not against the respondent personally.

On behalf of the appellant it was contended that the lower Court was not competent to put any restriction on the mode in which the decree might be executed.

Munshi *Kashi Prasad*, for the appellant.

Pandit *Nand Lal*, for the respondent.

The judgment of the Court (STRAIGHT, J. and MAHMOOD, J.) was delivered by

* Second Appeal, No. 11 of 1882, from an order of H. A. Harrison, Esq., Judge of Farukhabad, dated the 10th December, 1881, affirming an order of Mirza Abid Ali Beg, Subordinate Judge of Farukhabad, dated the 5th September, 1881.

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WALI
MUHAMMAD
v.
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STRAIGHT, J.—Looking at all the circumstances of the case, we think that the order of the Judge is an equitable one, in so far as he holds that the decree should be executed first against the mortgaged property, which is in the hands of the decree-holder's brother. We presume he means by this that if such mortgaged property should prove insufficient to satisfy the mortgagee's debt, he will still have the opportunity of proceeding against the person of the judgment-debtor. Holding this view and being of opinion that we are not debarred from applying equitable principles to the questions that arise in proceedings relating to execution of decree, we think the appeal must be dismissed with costs.

Appeal dismissed.

1882
June 21.

CRIMINAL JURISDICTION.

Before Mr. Justice Tyrrell.

EMPRESS OF INDIA v. MADHO.

Act XLV of 1860 (Penal Code), s. 182—Giving false "information" to a public servant.

M falsely informed the Collector of a District that certain zamindars had usurped possession of certain land belonging to Government, with the intent "to give trouble to such zamindars, and waste the time of the public authorities." *Held* that, inasmuch as such information was no more than an expression of a private person's belief that the Collector might, if he chose, sustain a civil suit with success against such zamindars, and as, had the Collector agreed with the informant, the result would not have been that he would have used his lawful power as a Collector or as a Magistrate to the injury or annoyance of such zamindars, or that he would have done anything he ought not to have done, *M* had not committed an offence under s. 182 of the Indian Penal Code.

THIS was a reference to the High Court by Mr. G. E. Ward, Magistrate of the Jaunpur District. It appeared that one Madho had preferred a petition to Mr. Ward as Collector, in which he stated that the zamindars of a certain village had taken possession of a market-place belonging to Government, and had caused themselves to be recorded as the proprietors thereof. Mr. Ward instituted an inquiry into the matter, and found that it had been decided some years previously that the property belonged