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SINGH
v.
ALI AHMAD.

by the defendant-appellant in appeal to this Court is that the decisions of the Munsif and the Subordinate Judge cannot be maintained, in so far as they grant the plaintiff-respondent enforcement of lien. We do not concur in this contention. It appears to us that, when the plaintiff-respondent discharged the whole amount of the mortgage-debt, he not only became entitled to a contribution of half the sum from the defendant-appellant, but having acquired the rights of the mortgagee, it was competent for him to assert a lien on the two biswas share of the defendant-appellant, for the proportion borne by it to the original pledge. In our opinion, therefore, the judgments of the lower Courts were right and we dismiss this appeal with costs.

Appeal dismissed.

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July 5.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

SITLA DIN (JUDGMENT-DEBTOR) v. SHEO PRASAD AND ANOTHER
(DECREE-HOLDERS)*

Execution of decree—Application for execution—“Step in aid of execution”—Act XV of 1877 (Limitation Act), sch. ii, No. 179 (4), (6).

Application for execution of a decree was made on the 22nd November, 1875, and in pursuance of such application certain property belonging to the judgment-debtor was advertised for sale on the 27th March, 1876. On the latter date the parties to such decree made a joint application in writing to the Court, wherein it was stated that the judgment-debtor had made a certain payment on account of such decree, and the decree-holders had agreed to give him four months time to pay the balance thereof, and it was prayed that such sale might be postponed and such time might be granted. The Court on the same day made an order on such application postponing such sale. The next application for execution of such decree was made on the 17th January, 1879. The lower appellate Court held, with reference to the question whether such application had been made within the time limited by law, that it had been so made, as under No. 179 (6), sch. ii of Act XV of 1877, such time began to run from the date of the expiration of the period of grace allowed to the judgment-debtor under the application of the 27th March, 1876. Held that No. 179 (6) had not any relevancy to the present case; but, inasmuch as the proceedings of the 27th March, 1876, might be considered as properly constituting a “step in aid of execution,” within the meaning of No. 179 (4), the application of the 17th January, 1879, was within time.

SHEO PRASAD and TULSHI RAM were the holders of a decree for money against Sitla Din. They applied for execution of their

* Second Appeal, No. 15 of 1881, from an order of J. H. Prinsep, Esq., Judge of Cawnpore, dated the 23rd December, 1880, reversing an order of Babu Ram Kali Chaudhri, Subordinate Judge of Cawnpore, dated the 25th February, 1879.

decree on the 22nd November, 1875, and in pursuance of this application certain property belonging to the judgment-debtor was advertized for sale on the 27th March, 1876. On the date last mentioned a petition signed by both parties to the decree was presented by the pleader for the decree-holders to the Court executing the decree, in which it was stated that the judgment-debtor had paid Rs. 35 in cash to the decree-holders, and the latter had allowed the former four months time to pay the balance due on the decree, and in which it was prayed that such time might accordingly be granted. On the same day the Court made the following order on this application: "This application was put in to-day by Ishri Prasad, pleader for the decree-holders, and he stated that the sale fixed for to-day might be postponed, and four months time be granted to the judgment-debtor; as the pleader for the decree-holders applies for the postponement of the sale, it is ordered that an order issue to the amin, as prayed by the pleader for the decree-holders, that he may postpone to-day's sale in this case." The decree-holders made their next application for execution of the decree on the 17th January, 1879. The Court of first instance held that this application was barred by limitation, as it had not been made within three years from the date of the previous application of the 22nd November, 1875. On appeal by the decree-holders the lower appellate Court held, with reference to cl. 6 of No. 179, sch. ii. of Act X^v of 1877, that limitation began to run from the date of the expiration of the period of grace allowed to the judgment-debtor under the application of the 27th March, 1876, and therefore the application of the 17th January, 1879, was made within the time limited by law.

The judgment-debtor appealed to the High Court, contending that the application of the 17th January, 1879, was barred by limitation, inasmuch as cl. 6 of No. 179, sch. ii. of Act XV of 1877, was not applicable, the date for payment from which the lower appellate Court had computed limitation not being the date for payment fixed by the decree, and inasmuch as no step in aid of execution of the decree had been taken within the three years immediately preceding that application.

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The *Junior Government Pleader* (Babu Dwarka Nath Banarji),
for the appellant.

Pandit *Bishambhar Nath*, for the respondents.

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

STRAIGHT, J.—“We do not concur in the Judge’s view that art. 179, cl. 6, of the Limitation Act XV of 1877 has any relevancy to the present case. But we think that the application of the 17th January, 1879, was in time, because we hold that the proceedings of the 27th March, 1876, may be considered as properly constituting a step in execution of decree. In adopting this view we follow and approve the decision in *Ghansham v. Mukha* (1). The appeal is dismissed with costs.

Before Mr. Justice Straight and Mr. Justice Duthoit.

GANGA RAM (PLAINTIFF) v. CHANDAN SINGH (DEFENDANT).*

Bond—Fraudulent alteration of hypothecation clause.

The obligee of a bond for the payment of money, in which a certain share of a village had been hypothecated as collateral security, having fraudulently altered such bond so as to make it appear that a larger share of such village was hypothecated, sued the obligor to recover the money due on such bond, by the sale of such larger share. The obligor admitted the execution of the bond and that a certain sum was due thereon. *Held*, on the question whether under these circumstances the obligee was entitled to relief as regards his claim for money, that he was not so entitled, inasmuch as the bond on which his suit was brought must be discarded, being a forgery, and therefore the suit as brought failed. S. A. No. 1037 of 1879 (2) decided the 11th March, 1880, distinguished.

THE plaintiff in this suit claimed Rs. 607, principal, and Rs. 23-11-0, interest, on a bond dated the 8th January, 1878, purporting to hypothecate a 5 biswas and 8 biswansis share of mauza Khajra Ghatam and certain other property. He claimed to recover such amount by sale of the hypothecated property. The defendant admitted the execution of the bond, and that he owed Rs. 332 odd under it; but alleged that he had only hypothecated in the bond a 5

* Second Appeal, No. 66 of 1881, from a decree of C. J. Daniell, Esq., Judge of Moradabad, dated the 29th September, 1880, affirming a decree of Maulvi Ain-ud-din, Munsif of Belari, dated the 30th June, 1880.

(1) I. L. R. 3 All. 320.

(2) Unreported.