

Joakim but done on pressure applied by Dr. Brown. Under such circumstances Joakim cannot be held to have given, by the assignment, an unfair preference to Dr. Brown, within the meaning of s. 351 of Act X. of 1877.

Cause remanded.

Before Mr. Justice Spankie and Mr. Justice Straight.

SITA RAM AND ANOTHER (PLAINTIFFS) v. MAHIPAL AND ANOTHER
(DEFENDANTS).*

Questions for Court executing decree—Separate Suit—Adjustment of decree—Act X of 1877 (Civil Procedure Code), ss. 244, 258—Assignment of decree.

M, who held a decree against *S* for possession of certain immoveable property and costs, assigned such decree to *S* by way of sale, agreeing to deliver the same to him on payment of the balance of the purchase-money. He subsequently applied for execution of the decree against *S*, claiming the costs which it awarded. *S* thereupon paid the amount of such costs into court, and, having obtained stay of execution, sued *M* for such decree, claiming by virtue of such assignment. The lower Court held that the suit was barred by the provisions of s. 244 of Act X of 1877, and also, treating such assignment as an uncertified adjustment of such decree, that it was barred by the terms of the last paragraph of s. 258 of that Act. *Held* that the suit was not barred by anything in either of those sections. The words "any Court" in the last paragraph of s. 258 refer to proceedings in execution and to the Court or Courts executing a decree.

THE plaintiffs in this suit claimed the delivery of a certificate of sale dated the 19th April, 1877, and a decree dated the 12th March, 1878, basing their claim on a deed of sale dated the 22nd August, 1879, whereby the defendants agreed to deliver those documents to them. It appeared that the defendants had sued the plaintiffs for possession of a two-fifths share of a certain house, basing this suit on the certificate of sale. The defendants obtained the decree in that suit, dated the 12th March, 1878, of which the plaintiffs claimed delivery in this suit. Subsequently the defendants agreed to sell to the plaintiffs the share of such house awarded to them by that decree, and on the 22nd August, 1879, executed a deed of sale in favour of the plaintiffs. This document provided that, on payment by the plaintiffs of the balance of the purchase-money, the defendants should deliver the sale-certificate and the

* Second Appeal, No. 950 of 1880, from a decree of S. M. Moens, Esq., Judge of Mirzapur, dated the 10th June, 1880, affirming a decree of Maulvi Fida Husain, Munsif of Mirzapur, dated the 15th March, 1880.

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decree to the plaintiffs. In December, 1879, the defendants took out execution of the decree against the plaintiffs for the recovery of the costs awarded thereby. The plaintiffs, with reference to the agreement contained in the deed of sale, objected to the execution of the decree, at the same time paying the amount of such costs into Court. The Court executing the decree ordered that execution thereof should be stayed for three months in order to enable the plaintiff to take the proper steps to enforce that agreement. The plaintiffs accordingly brought the present suit for the sale-certificate and the decree. The Court of first instance, regarding the agreement as an adjustment of the decree, held that, as the adjustment had not been certified to the Court executing the decree under the provisions of s. 258 of Act X of 1877, no Court could take notice of the adjustment, and consequently the suit was not maintainable. It further held that the suit was barred by the provisions of s. 244 of Act X of 1877, the question between the parties being one relating to the execution of the decree, which should be determined by the Court executing the decree and not by separate suit. On appeal by the plaintiffs the lower appellate Court also held that, having regard to s. 258, the suit was not maintainable, as the adjustment of the decree not having been certified could not be taken notice of by any Court.

The *Senior Government Pleader* (Lala Juala Prasad) and *Munshi Kashi Prasad*, for the appellants.

Babu Jogindro Nath Chaudhri, for the respondents.

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

STRAIGHT, J.—The defendants-respondents on the 12th March, 1878, obtained a decree upon a sale-certificate for the partition and possession of a two-fifth share of a house against Sita Ram and the ancestor of Kashi plaintiffs-appellants. The decree was in process of execution when an arrangement was come to the terms of which were embodied in a sale-deed dated 22nd of August, 1879. By this document it was provided that in consideration of the sum of Rs. 90 the decree-holders would deliver over to the judgment-debtors the sale-certificate and the decree founded upon it. By

way of earnest-money Rs. 25 was paid on account and the balance was to be forthcoming on the certificate of sale and the decree being handed over. This the decree-holders failed to do and on the contrary pursued these proceedings in execution, causing Sita Ram to be arrested in December, 1879. Objection was necessarily made by him and further execution was stayed for three months in order to enable him to bring a suit. This he has now done in conjunction with Kashi, the legal representative of his deceased co-judgment-debtor, and the relief he asks is that the defendants may be compelled to perform their contract of 22nd August, 1879, by being ordered to deliver up the sale-certificate and decree. The two lower Courts have dismissed the claim, holding it to be prohibited by ss. 244 and 258 of the Civil Procedure Code. We are clearly of opinion that the suit is maintainable and is in no way barred. The words "any Court" in the last paragraph of s. 258 have reference to proceedings in execution and refer to the Court or Courts executing a decree. They have no application to a Civil Court entertaining a separate suit asking for specific and legitimate relief of the character now prosecuted by the plaintiffs-appellants. The lower Courts have formed an altogether erroneous view and their decision cannot be sustained. The appeal is decreed with costs and the plaintiffs' claim will be allowed. Upon payment into Court of the balance due under the sale-deed of August, 1879; they will be entitled to receive the sale-certificate and decree, and in default of these being delivered over within fourteen days from the payment of such money being notified to the defendants, the plaintiffs will be entitled to proceed in execution.

Appeal allowed.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Spankie.

ROSHAN SINGH AND OTHERS (DEFENDANTS) v. HAR KISHAN SINGH
(PLAINTIFF).*

Guardian and minor—Hindu Law—Act XL of 1858.

The mother and guardian of a Hindu minor, although a certificate of guardianship has not been granted to her under Act XL of 1858, may deal with the estate of the minor, within the limits allowed by the Hindu Law.

* Special Appeal, No. 130 of 1880, from a decree of J. W. Power, Esq., Judge of Ghazipur, dated the 11th February, 1880, reversing a decree of Maulvi Abdul Majid Khan, Subordinate Judge of Ghazipur, dated the 30th September, 1879.