

one, for it had already, at almost the commencement of the Code, *i.e.* in s. 11, been expressly stated that "the Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is barred by any enactment for the time being in force." The suit out of which this reference has arisen can then be heard, as it is not barred either by the provisions of the Civil Procedure Code or of any other enactment.

There is, I consider, in this case, as in other instances mentioned at the hearing, a double remedy, and my answer therefore to the reference is that, under the circumstances stated, the auction-purchaser is not limited to the special procedure in the execution department, but is also competent to bring a suit for the recovery of the purchase-money.

APPELLATE CIVIL.

Before Mr. Justice Straight and Mr. Justice Oldfield.

HIMAYAT HUSAIN (JUDGMENT-DEBTOR) *v* JAI DEVI
(DECREE-HOLDER).*

Execution of decree—The decree to be executed where there has been an appeal—Costs.

The defendant in a suit appealed from so much of the decree of the Court of first instance as related to the amount of costs payable by him to the plaintiff. The decree of the appellate Court directed "that the order of the lower Court be upheld, and the appeal be dismissed: the appellant to pay the costs." *Held* that the amount of costs awarded by the Court of first instance, although they were not specified in the appellate Court's decree, were recoverable in execution of that decree, inasmuch as those costs were the subject-matter of the appeal, and the appellate Court, in affirming the decision of the first Court on that point, made them the substantive portion of its decree.

Shohrat Singh v. Bridgman (1) distinguished.

JAI DEVI, the plaintiff in a suit, obtained a decree against the defendant, Himayat Husain, in the following terms:—"The whole claim of the plaintiff be decreed against the defendant with interest amounting to Rs. 33-10 at the rate claimed on the

* Second Appeal No. 15 of 1883 from an order of E. B. Thornhill, Esq., Judge of Aligarh, dated the 10th October 1882, affirming an order of Maulvi Sami-ul-lah Khan, Subordinate Judge of Aligarh, dated the 9th October 1882.

1883

MUNNA
SINGH
v.
GAJADHAR
SINGH.

1883
May 8.

1883
 HIMAYAT
 HUSAIN
 v.
 JAI DEVI.

principal, and the entire costs of the Court: the decretal amount be charged against four shops in Guzri Bazar, the shops in Anwarganj and the Sarai in Anwarganj, being the hypothecated property: the plaintiff to recover future interest on the decretal amount and the costs at 8 annas per cent.: the defendant to pay the decretal amount within six months: plaintiff's costs, Rs. 295-1-9." The defendant appealed against so much of this decree as related to the item of Rs. 295-1-9 awarded to the plaintiff as costs. The order of the appellate Court was as follows: "It is ordered and decreed that the order of the lower Court be upheld and the appeal be dismissed: the appellant to pay the costs and interest at 6 per cent. per annum: it is further ordered that the defendant-appellant do pay to the plaintiff-respondent Rs. 16-4 with interest at 8 annas per cent. per mensem, the costs incurred by the plaintiff in this Court." The decree of the appellate Court contained no specification of the costs awarded by the Court of first instance. Jai Devi the re- upon applied for execution of his decree, including the item of Rs. 295-1-9 costs awarded him by the Court of first instance. The defendant objected to the recovery of this item on the ground that the decree of the appellate Court should alone be executed and that as there was no reference therein to this item in dispute, such item could not be recovered. In support of this contention he relied on *Shohrat Singh v. Brüdgerman* (1). The objection was disallowed by the Court of first instance. On appeal the lower appellate Court affirmed the order of the first Court. The defendant then appealed to the High Court, raising the same contention as he had raised below.

Munshi *Kashi Prasad* and *Shah Asad Ali* for the appellant.

The *Junior Government Pleader* (*Babu Dwarka Nath Banarji*) and *Babu Aprakash Chandar Mukarji* for the respondent.

The judgment of the Court (STRAIGHT and OLDFIELD, JJ.) was delivered by

STRAIGHT, J.—The costs which had been decreed by the first Court were alone the subject-matter of appeal to the lower appellate Court, which, in affirming the decision of the first Court upon that point, made the costs of the first Court the substantive portion of

(1) I. L. R., 4 All., 376.

its decree, and gave costs in the usual manner against the appellant on failure of his appeal. This distinguishes the case from *Shohrat Singh v. Bridgman* (1). The appeal is dismissed with costs.

1883

HIMAYAT
HUSAIN

v.

Appeal dismissed. JAI DEVI.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

BALWANT SINGH AND ANOTHER (DEFENDANTS) v. GUMANI RAM

(PLAINTIFF).*

1883

May 10 & 16.

Appeal—Limitation—Admission beyond time—Act XV of 1877 (Limitation Act), ss. 5, 14—Specific enforcement of contract—Expiration of time for enforcement.

The circumstances contemplated in s. 14 of the Limitation Act, 1877, will ordinarily constitute a sufficient cause in the sense of s. 5 for not presenting an appeal within the period of limitation.

A bond for money provided that on failure on the part of the obligor to pay interest as agreed in the bond, and within a certain period from the date of the bond, the obligee might sue for possession of the immoveable property mortgaged in the bond. Default was made in the payment of interest as agreed, but the obligee deferred bringing a suit for possession of the mortgaged property so long that the time mentioned in the bond expired before he could obtain a decree.

Held that under these circumstances a decree for possession of the property should not be granted to him.

THE plaintiff in this suit was the holder of a bond for money executed in his favour by the defendants, under the terms of which he was entitled, in default of payment of interest as agreed, and within the period of nine years from the date of the bond, to sue the defendants for possession of the property hypothecated in the bond. This bond was dated the 21st March 1871. Default was made in the payment of interest as agreed; and on the 14th January 1880, or two months and seven days before the expiration of the period mentioned in the bond, the plaintiff brought the present suit against the defendants for possession of the hypothecated property. The Court of first instance (Subordinate Judge) dismissed the suit, on the ground that, the term mentioned in the bond having expired, a decree could not properly be granted to the plaintiff for possession of the hypothecated property, as such a decree would be opposed to the terms of the bond. The lower

* Second Appeal, No. 1373 of 1882, from a decree of C. W. P. Watts, Esq., Judge of Agra, dated the 1st September 1882, reversing a decree of Maulvi Sultan Hasan Khan, Subordinate Judge of Agra, dated the 6th June 1881.

(1) I. L. R., 4 All., 376.