

1883
March 6.

FULL BENCH.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Oldfield, Mr. Justice Brodhurst and Mr. Justice Tyrrell.

SITA RAM (JUDGMENT-DEBTOR) v. DASRATH DAS (DECREE-HOLDER).*

Execution of decree—Compromise—Civil Procedure Code, s. 257 A.

The decree-holder and judgment-debtor of a decree filed a petition (*suleh-nama*) in the Court executing the decree, praying that the Court would sanction an arrangement providing for the payment of the decree by instalments, and enhancing the rate of interest made payable by the decree. The Court sanctioned the arrangement. *Held* that the "*suleh-nama*" was within s. 257 A of the Civil Procedure Code, and the decree might be executed in accordance with its provisions.

THE facts of this case were that on the 14th day of October, 1879, one Jokhan Das obtained a decree against Sita Ram for Rs. 1,211-5-0, with interest at eight annas per cent. On the 5th of April, 1880, the parties to the decree presented a petition to the Court executing the decree, the terms of which were as follows:—

"That a decree is held by Jokhan Das against the petitioner; that after a mutual arrangement the balance due to the decree-holder, after allowing for payments, is Rs. 1,190-7-6; that the petitioner will pay the same, but cannot pay it now; that the property advertized for sale, which is mortgaged in the deed on which the decree was obtained, would be wasted by auction-sale; that the petitioner has not mortgaged or sold the property either before this or now to any person, nor does he think of making a mortgage, *etc.*; that on being persuaded by respectable persons the decree-holder has agreed to realize the decretal amount in equal instalments with interest at one rupee per cent. per mensem from this date; that the petitioner (judgment-debtor) will pay the amount of the decree, instalment by instalment, with interest at one rupee per cent. per mensem, without any objection; should the petitioner (judgment-debtor) fail to pay the first instalment with interest on the fixed date, the decree-holder shall be at liberty, without waiting for the unexpired instalments, to realize the entire decretal amount, by cancelling the instalments, whether due or otherwise, together with interest at one per cent. per mensem from the mortgaged pro-

* Second Appeal No. 19 of 1882, from an order of R. J. Leeds, Esq., Judge of Gorakhpur, dated the 12th January, 1882, reversing an order of Hakim Rahat Ali, Subordinate Judge of Gorakhpur, dated the 17th September, 1881.

perty advertized for sale, and also from the other property and the person of the petitioner and his heirs ; that in that case neither the petitioner nor his heirs shall raise any objection as regards interest and other matters ; should the petitioner put forward any objection, it shall be untenable in any Court ; that until the repayment of the entire decretal amount the shares in mauza Khajuria hypothecated in the deed and advertized for sale shall remain as at present under mortgage and attachment for the decretal amount ; that the petitioner shall not transfer them to any person until the payment of the entire mortgage-money. The petitioner further covenants and records that if, owing to his action or that of his heirs, the decretal amount or interest agreed herein cannot be realized, damages shall be recoverable from the person of the petitioner and his other moveable and immoveable property with interest at Rs. 2 per cent-per mensem by the decree-holder ; that this contract has been accepted by the petitioner (judgment-debtor) without undue influence, willingly and voluntarily, and while in the enjoyment of sound health, and he shall act upon it ; that the petitioner prays that this arrangement be allowed ; that the payments made shall be certified to the Court ; any allegation as to payments out of Court shall be untenable." The petition then proceeded to specify the amounts of the instalments and the dates when the same were payable.

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The Court sanctioned the arrangement and ordered that the sale of the judgment-debtor's immoveable property should be postponed. On the 20th May, 1881, the decree-holder applied for execution of the whole decree, on the ground that the judgment-debtor had not paid a single instalment, and claiming interest at one rupee per cent. per mensem according to the arrangement embodied in the petition set forth above.

The judgment-debtor objected to the payment of interest according to that arrangement. The Court of first instance allowed the objection, being of opinion that "no agreement as to interest could be admitted at variance with the terms of the decree." From this order Dasrath Das, who represented the original decree-holder, appealed. The lower appellate Court (District Judge of Gorakhpur), by an order dated the 12th January, 1882, held that the agreement as to interest was of the character contemplated by

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s. 257A, Act X of 1877, as amended by Act XII of 1879, and that having been certified to the Court and formally acknowledged thereby, the decree-holder was entitled to have the decree executed in accordance with its conditions. Against this order the judgment-debtor Sita Ram appealed to the High Court. The same question, *viz.*, whether the decree could be executed in accordance with the terms of the agreement was raised by this appeal. This question was referred to the Full Bench by Brodhurst and Tyrrell, JJ., before whom the appeal came for hearing, the order of reference being as follows :—

TYRRELL, J.—A novel question is raised in this case. The decree-holder and judgment-debtor of a decree filed a petition in the Court executing the decree, praying that the Court would accept and give effect to a certain new arrangement governing the time when satisfaction of the judgment-debt should be made, and also enhancing the rate of interest made payable by the decree. The Court appears to have sanctioned these proposals, and it must be assumed to have done so under the new rules of law embodied in s. 257A of the Civil Procedure Code of 1877, which was in force when this "*suleh-nama*" was made. It is unquestionable that, prior to the addition of the terms of s. 257A to the rules of the Civil Procedure Code contained in the Chapter on the execution of decrees, the Civil Courts were debarred from giving effect, by way of execution, to an arrangement by which the terms of the decree were in any substantial respect altered. But the question is now raised, whether the effect of s. 257A may not be to modify that general rule, and to give the Courts power to execute a decree as altered or modified in the terms of that section, when such alteration or modification has received the sanction of the Court. We refer this question to a Full Bench.

Lala *Lalta Prasad*, for the appellant.

The *Senior Government Pleader* (Lala *Jualu Prasad*), for the respondent.

The following opinion was delivered by the Full Bench :—

STUART, C. J., and STRAIGHT, OLDFIELD, BRODHURST, and TYRRELL, JJ.—Having regard to all the circumstances disclosed, we

are of opinion that the *suleh-nama* was within s. 257A of the Civil Procedure Code, and that the order of the Judge of Gorakhpur of the 12th January, 1882, is a legal and proper one. With these remarks in reply to the reference made to us we leave the appeal for disposal to the Division Bench.

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GANGA DIN AND ANOTHER (DEFENDANTS) v. DHURANDHAR SINGH (PLAINTIFF).*

Landholder and tenant—Usufructuary mortgage by occupancy-tenant—“Transfer”—Act XII of 1881 (N.-W. P. Rent Act), s. 9.

A mortgage with possession by an occupancy-tenant of his cultivatory holding is a “transfer” within the prohibition of s. 9 of the N.-W. P. Rent Act, 1881.

THE facts of this case were that sometime prior to 1873, Babadin and Sahai, defendants in this suit, who were occupancy tenants of certain land, mortgaged it to Pragdin, also a defendant in this suit, giving him possession. By a deed, dated the 17th September, 1873, Pragdin sub-mortgaged a portion of the land to Tulshi, also a defendant in this suit, and gave him possession thereof. The material portion of that deed was as follows:—“The said Tulshi shall remain in possession of the mortgaged land, and pay the rent thereof; I shall redeem the mortgaged land at the end of the month of Jaith in any year. I pay in a lump sum Rs. 150 in cash to the aforesaid Tulshi; the mortgagee shall have no claim to the interest nor I to the profits.” On the 19th June, 1880, the defendants Babadin and Sahai transferred for a period of ten years their right to redeem the mortgage in favour of Pragdin to the plaintiff in this suit Dhurandhar Singh. The material part of the deed of the 19th June, 1880, was as follows:—“We have received the full and complete mortgage-money from the said mortgagee: we therefore covenant and record that the mortgagee shall by paying Rs. 72 in the month of Jaith of the current year to Pragdin, mortgagee, obtain redemption of the mortgaged cultivatory holding: that by obtaining possession thereof as a mortgagee he may

* Second Appeal No. 342 of 1882, from a decree of J. M. C. Steinbelt, Esq., Judge of Banda, dated the 16th January 1882, reversing a decree of Kazi Wajeh-ullah Khan, Subordinate Judge of Banda, dated the 10th September, 1882.