

execution. Nothing was done beyond the issue of notice under section 248 of the Code of Civil Procedure requiring the judgment-debtors to show cause why the decree should not be executed against them. After service of notice the execution proceedings were dismissed for default of the decree-holder. There was no adjudication by the Court directly or indirectly that the decree-holder was entitled to proceed with the execution and on that ground the Court held that as there had been nothing in the previous execution case from which it could be said that the Court had decided one way or the other as to whether the proceedings were barred by limitation it was still open to the judgment-debtor in subsequent proceedings to take the point. Both those cases appear to me to be materially different from the facts of the present case. Once one arrives at the conclusion that the Court has decided either directly or indirectly that the previous execution case was a fit one to try and therefore not barred by limitation there is an end to the matter and it is not open to either of the parties thereafter to raise the same question in a fresh execution. For these reasons it seems to me that the present appeal must fail and is accordingly dismissed with costs.

KULWANT SAHAY, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Dawson Miller, C. J and Kulwant Sahay, J.

RAGHU SINGH

v.

MAHANT KRISHNA DEYAL GIR.*

1923.

May, 29.

Code of Civil Procedure, 1908 (Act V of 1908), Order XLVII, rule 1—"other sufficient cause", omission of Court to refer to documentary evidence, whether is cause for review.

* Appeal from Original Order No. 134 of 1922, from an order of Babu Narendra Lal Basu, Subordinate Judge of Gaya, dated the 20th May, 1922.

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The mere fact that the court has omitted to refer expressly to some of the documentary evidence in the case does not entitle the party aggrieved by such omission to a review of the order passed.

Chhajju Ram v. Neki(1), referred to.

Appeal by the plaintiff.

This was an appeal from an order of the Subordinate Judge of Gaya, dated the 20th May, 1922, granting a review of a judgment of his predecessor. It appeared that one of the important points to be determined in the first judgment was the date upon which the plaintiff separated from the rest of his family. The trial Court found in favour of the defendant. The Subordinate Judge, on appeal, decided that question in favour of the plaintiff and allowed the appeal. Subsequently one of the defendants applied to the successor of the Subordinate Judge to grant a review of judgment on the ground that the Subordinate Judge had not mentioned in his judgment two documents one of which was a plaint in a suit which the plaintiff and his brothers had brought on a mortgage bond and in which there was apparently an admission that the family had separated at a later date than the plaintiff alleged in the present case, and the other document was a document connected therewith; it was the decree passed in that case. The Subordinate Judge who gave the decision complained of did not in terms refer to those two documents in his judgment; but he did, as appeared from the judgment, give reasons for arriving at his conclusions of fact. The Subordinate Judge whose order was under appeal considered that the mere fact that no mention was made in the previous judgment of these two documents was in itself a sufficient ground for granting the review and he made the order accordingly. From that decision the present appeal was brought.

Sambhu Saran, for the appellant.

(1) (1922) I. L. R. 3 Lah. 127; I. R. 49 I. A. 144.

Sailendranath Palit and *Kailaspati*, for the respondents.

DAWSON MILLER, C. J. (after stating the facts of the case, as set out above, proceeded as follows):—

It seems to me that the ground alleged is not one which comes within the purview of Order XLVII, rule 1. The only ground upon which a review can be obtained according to Order XLVII is the discovery of new and important matter or evidence which, after the exercise of due diligence, is not within the applicant's knowledge or could not be produced by him at the time when the decree was passed or the order made, or some mistake or error apparent on the face of the record or for any other sufficient reason. It has been decided by the Judicial Committee in the case of *Chhajju Ram v. Neki* (1) that the words "any other sufficient reason" in that order mean a reason sufficient on grounds at least analogous to those specified immediately previously. It follows from that that these words "any other sufficient reason" are not of a wide and general application so as to give the Court a discretion in such cases whether to allow a review or not. The reason there indicated must be some reason analogous to the two grounds of review mentioned immediately before. It seems to me that the mere fact that a Judge has not in terms referred to certain of the evidence in favour of one party or the other is not a sufficient reason entitling that party to come before the Court subsequently and seek to have a review of that judgment. It is undoubtedly a matter which might be urged in appeal, if any appeal were permissible on questions of fact; but I think it would be stretching the language of the Order too far to say that the mere fact that certain evidence has not been specifically mentioned in the judgment is a good reason within Order XLVII, rule 1, for granting a review.

In my opinion this appeal must succeed, the order of the learned Subordinate Judge of the 20th of May,

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1922, will be set aside and the decree which is reversed will be restored.

The appellant is entitled to his costs from the respondent, Mahant Krishna Deyal Gir, who has appeared.

KULWANT SAHAY, J.—I agree.

Appeal allowed.

APPELLATE CIVIL.

Before Dawson Miller, C. J. and Kulwant Sahay, J.

JAGANNATH SAO

v.

DEBI PRASAD DHANDHANIA.*

Code of Civil Procedure, 1908 (Act V of 1908), Order XXI, rule 30—decree for money—certain properties pledged as security for payment—execution of decree whether attachment is necessary.

The procedure provided in Order XXI, rule 30, Civil Procedure Code, applies only to cases in which there is a decree for the payment of money and the decree does not affect specific immovable property.

Where, therefore, a compromise decree provided for the payment of a certain sum of money and also provided that certain property should be regarded as security for the fulfilment of the terms of the decree, and that in case of default in payment the plaintiff should be entitled to sell the charged property in execution of the decree, *held*, that it was not necessary for the plaintiff to have the property attached before bringing it to sale in execution of the decree

Appeal by the judgment-debtors.

The decree-holders obtained against the judgment-debtors a decree for the sum of Rs. 29,925. That decree, which was passed on the 14th June, 1919, was the result of a compromise between the parties to the suit. The suit was decreed in terms of the compromise. It provided that a decree should be passed in favour

* Appeal from Original Order No. 127 of 1922, from an order of Babu Abinash Chandra Nag, Subordinate Judge of Bhagalpur, dated the 7th April, 1922.

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May, 31.