

APPELLATE CIVIL.

Before Mr. Justice Broadway and Mr. Justice Martineau.

MOHNA MAL (DECREE-HOLDER)—*Appellant,*

versus

TULSI RAM AND RAMJI DAS (JUDGMENT-DEBTORS)—*Respondents.*

1921

Dec. 23.

Civil Appeal No. 605 of 1919.

Second appeal from order in execution proceedings concerning Rs. 240—Attachment of money deposited by a mortgagor in redemption of a mortgage in favour of the Judgment-debtor—whether competent—Redemption of Mortgages (Punjab) Act, II of 1913, Section 15.

M. M. held a decree against T. R. for Rs. 4,779-2-0. This decree was passed by a Subordinate Judge. In the course of executing the decree M. M. attached a sum of Rs 240, which had been deposited in the Court of the Revenue Assistant under the provisions of Punjab Act, II of 1913, by one M. B. who desired to redeem the land mortgaged by him to T. R. The mortgage had been redeemed and M. B. had been given possession of the mortgaged property. Objection was taken by T. R. that this money was not attachable—*vide* section 15 of the Act. This objection was given effect to by the executing Court and upheld by the District Judge. In the High Court it was urged that no second appeal was competent as the order refusing attachment of the sum of Rs. 240 must be taken to be a decree in a small cause of a value under Rs. 500.

Held, that in determining whether a second appeal lies against an order passed in execution proceedings, the amount of the subject-matter of the suit and not the amount sought to be recovered in execution must be taken into consideration.

Khazan Singh v. Khushal Singh (1) and *Mavula Ammal v. Mavula Maracoir* (2), followed.

Held also, that the provisions of section 15 of Act II of 1913 are primarily for the protection of the person depositing the money. The depositor M. B., having been given possession of the land, the money became the property of the judgment-debtor, and was therefore attachable in execution of a decree against him.

Miscellaneous second appeal from the order of Major F. C. Nicolas, District Judge, Ferozapore, dated the 14th March 1919, affirming that of H. B. Anderson,

(1) 29 P. R. 1902.

(2) (1906) I. L. R. 30 Mad. 212.

1921

MOHNA MAL
v.
TULSI RAM.

Esquire, Subordinate Judge, 1st Class, Ferozepore. dated the 20th July 1918, releasing money from attachment.

FAKIR CHAND, For Appellant.

Nemo, For Respondents.

The judgment of the Court was delivered by—

BROADWAY, J.—The appellant Mohna Mal held a decree against Tulsi Ram, etc., for Rs. 4,779-2-0. This decree had been passed by a Subordinate Judge. In the course of executing this decree Mohna Mal attached a sum of Rs. 240 which have been deposited in the Court of the Revenue Assistant, under the provision of Act II of 1913, by Miran Bakhsh who desired to redeem the land mortgaged by him to Tulsi Ram, etc. It appears that the mortgage had been redeemed and Miran Bakhsh had been given possession of the mortgaged property. Objection was taken by Tulsi Ram, etc., to the effect that this money was not attachable in view of the provisions of section 15 of Act II of 1913. This objection was given effect to by the executing Court whose decision was upheld on appeal by the District Judge. Mohna Mal then preferred a second appeal to this Court through Mr. Fakir Chand which came up before Rattigan, J., on the 10th July 1919. Objection was taken on behalf of the respondents that no second appeal was competent as the order refusing attachment of the sum of Rs. 240 must be taken to be a decree in a small cause of a value under Rs. 500. Rattigan, J., by an order, dated 11th July 1919, referred the case to a Division Bench for decision both as to the competency of the second appeal and on the question whether the sum of Rs. 240 referred to was liable to attachment.

Before us the appellant has been represented by Mr. Fakir Chand. The respondents though served are absent, their former *Vakil* Mr. Durga Das having sent in a withdrawal slip. After hearing Mr. Fakir Chand we are of opinion that a second appeal is competent and that the sum of Rs. 240 in question is liable to attachment. In *Khazan Singh v. Khushal Singh* (1) it was held by Reid, J., that where an appeal from the decree in the original suit lay to the Divisional Court, the

appeal from an order in execution of that decree lay to the same Court. This view is further supported by a decision of the Madras High Court in *Mavula Ammal v. Mavula Maracoir* (1) where it was held that in determining whether second appeals lie in such cases in execution proceedings, the amount of the subject-matter of the suit and not the amount sought to be recovered in execution must be taken into consideration. With this view we are in accord. Further, the execution proceedings were being taken in the Court of the Subordinate Judge, and an appeal from an order passed by a Subordinate Judge would lie under section 39 (1) (a) of the Punjab Courts Act to the District Judge, and in fact the appeal in this case was lodged in the Court of the District Judge. A second appeal is therefore competent.

Coming now to the second point. It seems to us that the provisions of section 15 of Act II of 1913 are primarily for the protection of the person depositing the money, and that the intention of the Legislature was that the money deposited under the provisions of this Act should be exempt from attachment in execution of a decree against the depositor. In the present case, the depositor Miran Bakhsh had had his mortgage redeemed and had been given possession of his property. The money thus belonged to Tulsi Ram, etc., and we are unable to see any reason for thinking that it was not attachable as such.

We accordingly accept this appeal with costs and declare that the sum of Rs. 240 in question is liable to attachment in the decree passed in Mohna Mal's favour.

A. R.

Appeal accepted.

1921

MOHNA MAL
v.
TULSI RAM.

(1) (1906) I. L. R. 30 Mad. 212.