

APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Birdwood.

1885.
February 23.

BHAGU JETHA, APPELLANT, v. MALEK BA'WA'SA'HEB, RESPONDENT.*

*Civil Procedure Code, Act XIV of 1882, Sec. 230—Decree—Execution—
Fraud.*

A judgment debtor on seeing the Court's bailiff approach his house to attach his property left the verandah, went inside the house, chained the door, and refused to open it when called on to do so by the bailiff.

Held, that the conduct of the judgment-debtor amounted to a prevention by fraud of the execution of the decree within the meaning of section 230 of the Civil Procedure Code (Act XIV of 1882).

THIS was an appeal from an order made by Rāv Bahādur Makundrai Manirai, First Class Subordinate Judge of Ahmedabad, rejecting the application of the appellant for execution of his decree.

The facts and arguments sufficiently appear from the judgment of the High Court.

Rāv Sāheb Vāsudev Jugannāth Kirtikar for the appellant.

Pāndurang Balibhadra, Acting Government Pleader, for the respondent.

SARGENT, C.J.—The decree of which execution was sought by the appellant on the 21st June 1882 was passed on the 1st September 1865. His last preceding application for execution was made on the 31st July 1879, and was granted. It is contended for the appellant that when the Court's bailiff went, in pursuance of the order made on that application, to the house of the respondent (the judgment-debtor) to attach his property, he was prevented by the respondent from attaching it. Evidence was adduced to show that the respondent, on seeing the bailiff approach his house, left the verandah and went inside the house, and chained the door and refused to open it when called on to do so by the bailiff.

It is admitted by respondent's pleader that, if this evidence is true, and that if the conduct ascribed to the respondent amounted

* Regular Appeal No. 65 of 1882.

to fraud, within the meaning of sec. 230 of the Code of Civil Procedure, the application of 21st June 1882 was not barred by time. We see no reason for distrusting the evidence relied on by the appellant; and the conduct of the respondent amounted, we think, to a prevention, "by fraud," within the meaning of section 230 of the Code of Civil Procedure, of the execution of the decree. In this view we are supported by the decision of the Madras High Court in *Pattakara Annamalai v. Rangasami Chetti*.⁽¹⁾ In that case the debtor had eluded the service of the warrant on several occasions, and by making applications, which had the effect, for the time, of staying execution, had managed to delay it for more than 12 years. In disposing of the case, Innes, J., remarked: "I think, to give full effect to the penultimate paragraph of section 230, it is necessary to interpret the word 'fraud' in a wider sense than that in which it is generally used in English law. In the Digest it is defined by *Labeo, omnis calliditas, fallacia, machinatio ad circumveniendum, fallendum, decipiendum alterum adhibita*. Dig. IV. 3, 1. I think the contrivance with which the debtor had eluded the creditor until 12 years has elapsed since the execution should be held to be 'fraud' within the meaning of the section, and I would dismiss this second appeal, with costs." Kindersley, J., said: "The appellant has, by many stratagems, by keeping out of the way when warrants were issued for his apprehension, and by raising false objections in bad faith, dishonestly evaded payment for more than 12 years of the money which was justly due to the decree-holder."

We think that the judgment-debtor in the present case has similarly evaded execution by a dishonest stratagem, amounting to fraud, and that therefore, under the last paragraph but one of section 230 of the Code, the application of 21st June 1882 was not barred. The order of the Subordinate Judge is reversed, and proceedings should now be taken on the application according to law. Costs to follow.

Order reversed.

(1) I. L. R. 6 Mad. 365.

1885.

BHAGT JETHA
P.
MALEK
BÁWÁSÁHEB.