

six calendar months from this date, the sum of Rs. 46-14-0, being three-fourths of the sum of Rs. 62-8-0 found by the Assistant Judge to be due on the mortgage, and be thereupon put in possession of sub-Nos. 1 and 2 of Survey Field No. 38; and that, in default of such payment, the plaintiff be for ever foreclosed. His claim to redeem sub-Nos. 3, 4 and 5 is rejected. The plaintiff to bear the costs of appeal in the Court below. Each party to bear his own costs in the Court of first instance and in this Court.

1886.

NARO
HARI
BHAVE
v.

VITHALBHAT.

APPELLATE CIVIL.

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

GULIBA'I, WIDOW OF BA'LMUKAND, (ORIGINAL PLAINTIFF), APPELLANT,
v. JAGANNATH GALVANKAR, (ORIGINAL DEFENDANT), RESPONDENT.*

1885.
July 6.

Decree—Execution—Suit to declare property liable to attachment in execution of a decree—Plea that the decree was collusive—Fraud—Civil Procedure Code (Act XIV of 1882), Sec. 283.

A. obtained a money decree against B., and, in execution, attached property in the possession of C., who claimed to have purchased it for value from B. previously to the date of the decree. The attachment was removed on the motion of C. A. then brought a suit against C., under section 283 of the Code of Civil Procedure (Act XIV of 1882), to have it declared that the property was liable to attachment and sale under the decree. C. contended that the decree, sought to be executed, was a collusive one.

Held, that C. could not be allowed to impeach the decree between A. and B.

This was a second appeal from the decision of W. H. Crowe, Judge of the district of Thána, reversing the decree of Ráv Sáheb A. K. Kotháre, Subordinate Judge of Dáhánu.

This suit was instituted by the plaintiff to have it declared that certain property was liable to sale in execution of a money decree obtained against one Rámkrishna by the deceased husband of the plaintiff. The plaintiff alleged that Rámkrishna was the owner of the property, and in possession.

The defendant contended, amongst other things, that the decree was collusive; that in 1874,—that is, previously to the date of the decree,—Rámkrishna sold it to one Máhádev, whose heir in 1878 sold it to the defendant, who was consequently in possession as proprietor.

* Second Appeal, No. 641 of 1883.

1885.

GULIBÁI
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Both the lower Courts held the decree to be collusive, but the Subordinate Judge was of opinion that the defendant could not impeach it. He, therefore, made a decree in favour of the plaintiff. The District Judge held that the defendant could properly impeach the decree, on the ground of fraud and collusion, and reversed the decree of the Subordinate Judge, and rejected the plaintiff's claim.

The plaintiff appealed to the High Court.

Gokuldás Káhandás for the appellant:—It is not open to a third party to impugn a decree on the ground of fraud—*Ahmedbhoy Hubibhoy v. Vulleebhoy Cássumbhoy*⁽¹⁾ and *Purshottam Vithal v. Purshottam Iswan*⁽²⁾. So long as a suit is not brought to set aside the decree, it is a good one; and all that is open to the plaintiff is to establish the right of the judgment-debtor—section 283 of Act XIV of 1882. Only such defence can be taken in the suit as could have been taken in the execution proceedings, in which the only question would have been, whether the defendant was in possession in trust for the judgment-debtor. See section 280 of Act XIV of 1882.

Máhdév Chimmáji Ápte for the respondent:—The suit is not merely for execution of the decree obtained by the plaintiff's husband. The execution matter was disposed of by the raising of the attachment. The suit puts the defendant to proof of his title. The case of *Ahmedbhoy Hubibhoy v. Vulleebhoy Cássumbhoy*⁽¹⁾ shows that the decree can be impeached by the defendant, who purchased long before the date of the decree. It is for the plaintiff to prove her title. If the plaintiff bases her title upon a fraudulent decree, her title fails.

SARGENT, C. J. :—The question in this case is, whether the defendant to a suit brought by the attaching creditor under section 283 of the Code of Civil Procedure (XIV of 1882) can resist the suit, at the outset, by impeaching the decree as a colourable one, and made in a sham proceeding in Court. The District Judge has held that he could do so, on the ground that the Court ought

(1) I. L. R., 6 Bom., 703.

(2) I. L. R., 8 Bom., 532.

not to assist "a fraudulent combination." Such a decree can, doubtless, be impeached by a stranger to it, when it prejudices a party to a suit on the merits, as in the case of a judgment *in rem* which determines the *status* of one of the parties—a matter in issue in the suit: *Harrison v. Mayor of Southampton* ⁽¹⁾; or, again, by a purchaser for value where it is sought to use it as a shield to a sham mortgage, or purchase of earlier date, as was held in *Gopi Wásudev Bhat v. Márkande Náráyan Bhat* ⁽²⁾. But the object of a suit brought under section 283 of the Code of Civil Procedure (XIV of 1882) is simply to determine whether the property can be taken in execution as belonging to the judgment-debtor. The question, on the merits, is not affected by the decree; and to allow the claimant to deny the plaintiff's right to bring the suit, by impeaching the decree, which the latter is seeking to execute as collusive, would be, we fear, to add to the difficulties (already very great) of judgment-creditors in enforcing their decrees, by affording additional encouragement to collusive resistance by judgment-debtors and third parties.

We must, therefore, reverse the decree, and send the case back for trial on the other issues. Costs of this appeal to follow the result.

(1) 4 DeG. M. & G., 137.

(2) I. L. R., 3 Bom., 30.

APPELLATE CIVIL.

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

MAYA SHANKAR, (ORIGINAL PLAINTIFF), APPELLANT, *v.* HARISHANKAR AND OTHERS, (ORIGINAL DEFENDANTS), RESPONDENTS.*

1886.
June 18.

Jurisdiction—Caste question—Suit for damages on account of withholding a customary present from a member of a caste.

The plaintiff complained that on the occasion of the distribution of certain funeral presents by the defendant's father, in which, as a member of the caste, the plaintiff was entitled to share, he had been omitted, and had received nothing. He sued the defendants to recover damages for the injury to his character and reputation caused by such omission.

Held, that there was no legal right, in the plaintiff, to the funeral presents; and the slight, which the omission to give such presents to the plaintiff might imply,

* Second Appeal, No. 426 of 1884.

1885.
GULIBÁI
v.
JAGANNÁTH
GALVANKAR.