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plaintiff is not the legal representative, as on her own statement she would appear to be, there should have been an application made to strike her name off, as not filling that capacity. There has been nothing of the sort. The summons must be dismissed.

Attorneys for the plaintiff:—Messrs. *Little, Smith, Frere and Nicholson.*

Attorneys for defendants:—Messrs. *Payne, Gilbert and Sayani.*

APPELLATE CIVIL.

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

1891. *July* 16.

GOPA'L NA'NA'SHET, (ORIGINAL DEFENDANT), APPELLANT, *v.* JOHA'RIMAL VALAD JITA'JI, (ORIGINAL APPLICANT), RESPONDENT.*

DA'DA' BA'LSHET, (ORIGINAL DEFENDANT), APPELLANT, *v.* JOHA'RIMAL VALAD JITA'JI, (ORIGINAL APPLICANT), RESPONDENT.†

Attachment—Partition decree—Money decree—Adjustment of partition decree after attachment—Adjustment invalid—"Saleable property"—Civil Procedure Code (Act XIV of 1882), *Secs.* 266 *and* 273.

The particular procedure prescribed by section 273 of the Civil Procedure Code (Act XIV of 1882) is clearly confined to money decrees, and, therefore, such decrees cannot be sold after being attached; all other decrees are both attachable, and saleable, as "saleable property," under section 266 of the Code.

A decree being attached as directed by section 273 of the Civil Procedure Code, its adjustment subsequent to such attachment cannot be recognized by the Court.

THIS was an appeal from an order passed by Khán Sáheb L. G. Fernandez, First Class Subordinate Judge of Násik, in proceedings in execution of a decree.

The facts of the case necessary for the purpose of this report were as follows:—

One Govind Nánáshet Shimpi brought a partition suit (No. 340 of 1880) in the Court of the First Class Subordinate Judge of Násik against Gopál Nánáshet Shimpi, Dádá Bálshet Shimpi and others, and obtained a decree on the 22nd December, 1883. While the said decree was being executed, one Kondáji valad

* Appeal No. 12 of 1891. † Appeal No. 42 of 1891.

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Vithoji obtained a money decree in the Subordinate Judge's Court at Yeola against Govind Náná, and assigned it to one Náráyan Rámji, who in execution thereof on the 26th October, 1886, presented an application for the attachment of Govind Náná's partition decree. Consequently a prohibitory order was issued, on the 30th October, 1886, by the Subordinate Judge of Yeola, under section 273 of the Civil Procedure Code (Act XIV of 1882), and served upon Govind Náná; a notice was also sent to the Court of the First Class Subordinate Judge of Násik on the 30th December, 1886, to stop the execution of the partition decree. Afterwards, in the year, 1888, Govind Náná and Gopál effected an adjustment of the partition decree. On the 4th January, 1889, the partition decree was sold in execution of the money decree against Govind Náná, and was purchased by Johárimal valad Jitáji, who having presented an application for execution, Gopál Nánáshet and Dádá Bálshet contended that the decree was satisfied; that the original decree-holder had entered satisfaction thereon; and that the decree could not be sold.

The Subordinate Judge disallowed the objections, and granted Johárimal's application.

Against the order of the Subordinate Judge, Gopál Nánáshet and Dádá Bálshet preferred appeals Nos. 12 and 42, respectively, to the High Court.

Shivrám Vitthal Bhandárkar for the appellants:—We contend that the original partition decree could not be sold in execution of the money decree, and that Gopál Náná was not precluded from effecting adjustment of the former decree.

The decree could not be sold, especially as it was a partition decree. Section 273 of the Civil Procedure Code does not contemplate the sale of a decree—*Sultán Kuar* v. *Gulzári Lál*(1); *Tiruvengada* v. *Vythilinga*(2). The rules laid down in the Civil Procedure Code with respect to the sale of moveable and immoveable property cannot apply to a decree, because the purchaser of a decree does not necessarily stand in the position of the decree-holder. In the present case the person who applied or the sale of the partition decree was not the decree-holder.

(1) I. L. R., 2 All., 290.

(2) I. L. R., 6 Mad., 418.

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himself under the money decree; he was the assignee of that decree-holder, and, therefore, was not entitled to execute the decree against us, who were not the judgment-debtors under that decree. The transferee of the decree is not entitled to have execution as of right—*Jávermál* v. *Umáji* (1).

Owing to the present proceedings we have suffered great hardship. Under the adjustment we have already satisfied the decree, and we are now called upon to satisfy it over again. We submit, as no prohibitory order was served upon us under section 273 of the Civil Procedure Code, we were not precluded from effecting the adjustment.

Dáji Abáji Khare for the respondent:—The point whether a decree can be sold or not was argued, and the sale was recognized, in *Naigar Timápa* v. *Bhúskar Parmaya* (2). While the proceedings in execution under the money decree were going on, the judgment-debtor, Govind Náná, applied for stay of execution, and the present appellant then stood surety for him. So when the partition decree was subsequently adjusted, the appellant had full knowledge of the money decree and the proceedings under it. The adjustment was, therefore, fraudulent and collusive.

A decree can be attached—*Prince Gholám Mahomed* v. *Indrá-Chand Jahuri* (3). If it can be attached it follows that it can be sold. The above ruling was under section 205 of the old Procedure Code (Act VIII of 1859), but that section corresponds with section 266 of the present Code (Act XIV of 1882).

Shivrám Vitthal Bhandárkar in reply.

SARGENT, C. J.:—The first point in this appeal is whether the decree of 1883 for the partition of immoveable and moveable property could be sold after attachment. It has been held in *Sultán Kuar* v. *Gulzári Lál* (4) and *Tiruvengada* v. *Vythilinga* (5), that a money decree cannot be sold after being attached, by reason of the particular procedure prescribed by section 273, Civil Procedure Code. But that procedure is clearly confined to money decrees. All other decrees are both

(1) I. L. R., 9 Bom., 179.
(2) I. L. R., 10 Bom., 444.
(3) 7 Beng. L. R., 318.
(4) I. L. R., 2 All., 290.
(5) I. L. R., 6 Mad., 418.

attachable, and saleable as "saleable property," under section 266. With respect to the adjustment of the decree, relied on by the appellant, between Govind Náná and himself in 1888, as it was subsequent to the notice given on 30th December, 1886, to the Násik Court, as directed by section 273, the Court of Násik had no power to sanction it, it being expressly forbidden by that section from proceeding further with the execution of the decree, and the adjustment cannot, therefore, be now recognized by the Court. We must, therefore, confirm the order of the Court below with costs.

Order confirmed.

APPELLATE CIVIL.

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

KA'SHIM VALAD KAMA'L NA'IK, (ORIGINAL PLAINTIFF), APPELLANT, *v.* AMINBI KOM GAVASUMIYA AND THE COLLECTOR OF BELGAUM, (ORIGINAL DEFENDANTS), RESPONDENTS.*

1891, *July* 22.

Land Acquisition Act (X of 1870), Parts III and IV, Secs. 3, 14, 15, 38 *and* 39 *—Reference by the Collector to the District Judge—Questions of conflicting claims to title—Persons claiming interest in the compensation—"Apportionment," construction of the term—District Judge's order—Appeal.*

A Collector having acquired land under the provisions of the Land Acquisition Act (X of 1870), and a question having arisen as to the right to the compensation—each of two rival claimants claiming exclusive title to the whole of the compensation awarded—the Collector referred the question to the decision of the District Judge under section 15 of the Act. The District Judge having decided the question in favour of one of the claimants, the other appealed to the High Court. In appeal, it was contended that as the provisions of the Land Acquisition Act apply only to cases in which there is a dispute as to the apportionment of compensation, and as in this case each of the claimants laid claim to the entire amount of the compensation, the order passed by the District Judge was not appealable under the provisions of the Act, as there was no question of apportionment to be determined.

Held, that looking to the language of section 15 of the Land Acquisition Act (X of 1870), which clearly contemplates the reference of such a dispute as this being provided for in a subsequent part of the Act, and as there is no other provision in the Act made for it, the term "apportionment" in Part IV should be given a liberal construction, as including the case where the Court has to decide between rival claimants to the entire compensation. The order of the District Judge was, therefore, appealable.

* Appeal No. 30 of 1891.