

APPELLATE CIVIL.

Before Sir C. F. Farran, Kt., Chief Justice, and Mr. Justice Candy.

GANPAT BHAGVAN, DECREE-HOLDER, v. MAHADEV HARI,
DEFENDANT.*

1897.

June 10.

Execution—Arrest—Application of judgment-debtor to be declared insolvent—Subsequent proceedings in execution against him—Practice—Procedure—Civil Procedure Code (Act XIV of 1882), Secs. 245 B, 336, 337 A, 344 and 349.

Ganpat Bhagvan obtained a money-decree against Mahadev and in execution applied for his arrest and imprisonment. Before the warrant of arrest was issued, but after Mahadev had appeared in Court in obedience to a notice under section 245B of the Civil Procedure Code (Act XIV of 1882), another judgment-creditor applied for execution of another decree against him. Thereupon Mahadev applied under section 344 of the Civil Procedure Code (Act XIV of 1882) to be declared an insolvent, and in his application mentioned Ganpat Bhagvan as one of his creditors (section 345). The Subordinate Judge referred to the High Court the question whether pending the inquiry into Mahadev's insolvency he could be arrested in execution of Ganpat Bhagvan's decree against him.

Held, that there was no provision in the Code to prevent the Court from issuing a warrant of arrest against him.

Where, however, such a judgment-debtor is brought before the Court under a warrant of arrest, or comes before it upon notice under section 245B, the Court has a discretionary power not to put the warrant in force under section 349 or not to issue it under section 336 (where the requisite notification has been published by the Local Government) if the applicant furnishes security for his appearance when called upon.

In such cases the Court can also act under section 337A of the Civil Procedure Code (Act XIV of 1882).

REFERENCE by Ráo Bahádur Chunilal Maneklal, First Class Subordinate Judge of Dhulia in the Khándesh District, under section 617 of the Civil Procedure Code (Act XIV of 1882).

One Ganpat Bhagvan obtained a money decree against Mahadev Hari and applied for execution by arrest and imprisonment of the defendant. Before the warrant of arrest was issued, but after Mahadev had appeared in Court in obedience to a notice under section 245B of the Civil Procedure Code (Act XIV of 1882), another judgment-creditor applied for execution of another decree against him. Mahadev thereupon applied to be declared

* Civil Reference, No. 6 of 1897.

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an insolvent under section 344 of the Civil Procedure Code (Act XIV of 1882). In his application he inserted the name of Ganpat Bhagvan as one of his creditors. Pending inquiry into the said application, the Subordinate Judge referred the following question :—

“Whether the defendant can be arrested in execution of the decree of Ganpat Bhagvan pending an inquiry into the defendant’s application for insolvency?”

The opinion of the Judge was in the negative.

Mahadev V. Bhat (amicus curiæ), for the decree-holder :—The mere fact that the judgment-debtor has inserted the name of the decree-holder in his application to be declared an insolvent, and that his application is pending, does not take away the decree-holder’s right of having the judgment debtor arrested and imprisoned in execution of his decree. Chapter XIX of the Code deals with arrest and imprisonment of judgment-debtors. There is no section in it which exempts a judgment-debtor from arrest and imprisonment on the ground that an application for insolvency in other execution proceedings is pending.

There is nothing to show that the conditions laid down in section 336 or section 337A of the Code were satisfied in the present case. The Court, therefore, cannot exercise the discretion vested in it by those sections in favour of the judgment-debtor.

Ramlall V. Desai (amicus curiæ) for the judgment-debtor :—A judgment-debtor, who has been arrested and brought before the Court under section 336 of the Civil Procedure Code, may declare his intention to apply to be declared an insolvent. He may do this as often as he is brought before the Court in execution of decrees against him. Where he has done so in one execution proceeding it would be absurd to arrest and to bring him again before the Court in another similar proceeding where the name of the creditor, who has caused his arrest, has been inserted in the application for insolvency. It is true there is no provision in the Civil Procedure Code forbidding a Court from issuing warrants of arrest or notices to show cause why execution should not issue in as many execution proceedings as there may be decrees, but the judgment-debtor so arrested or brought before

the Court has merely to repeat his application to be declared an insolvent, and the Court must release him from arrest.

The insertion of the name of the judgment-creditor in the list of creditors given with the application for insolvency, is equivalent to an application for insolvency in each case, and Ganpat Bhagvan's name having been included in the application, the defendant cannot be subsequently arrested at his instance.

FARRAN, C. J.:—There is no section in the Code which prevents the Court issuing a warrant of arrest or a notice under section 245 B of the Civil Procedure Code (Act XIV of 1882) against a judgment-debtor who has in other execution proceedings made an application under section 344 to be declared an insolvent pending the inquiry into such application. Where, however, such judgment-debtor is brought before the Court under a warrant of arrest, or comes before it upon notice under section 245 B, the Court has a discretionary power not to put the warrant in force under section 349 or not to issue it under section 336 (where the requisite notification has been published by the Local Government) if the applicant furnishes security for his appearance when called upon. The Court can also act in such cases under section 337 A.

Order accordingly.

APPELLATE CIVIL.

Before Sir C. F. Farran, Kt., Chief Justice, and Mr. Justice Candy.

DAGDU AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, v. KALU
(ORIGINAL DEFENDANT), RESPONDENT.*

1897

June 14.

Adverse possession continuous—Temporary interruption of possession—Wrongful possession given by Court to a third person—Restoration of possession to defendant.

In a suit brought to recover possession of certain land the defendant pleaded limitation. He had held possession of the land adversely to the plaintiff from 1881 up to the date of suit (2nd October, 1895), with the exception of a period of three years (*viz.*, 4th April, 1892, to 9th April, 1895) during which he was dispossessed under a decree of a Civil Court of first instance obtained against him by a third person, which being reversed in appeal he was restored to possession on the said 9th April, 1895.

* Second Appeal, No. 904 of 1896.