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but none were pointed out by Mr. Arathoon which would afford a suitable remedy or which would preclude such an action as the present." The opponent's course, if he desired the matter to be summarily disposed of, was to have taken steps under section 278 to have the attachment on the box raised. By paying the amount of the decree into Court he has entailed upon himself the necessity of filing a suit if he desires to recover it.

Rule absolute to set aside the order as made without jurisdiction. The applicant is entitled to his costs.

Rule made absolute.

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Hosking.

CHINTAMAN BIN VITHOBA (ORIGINAL DEFENDANT), APPELLANT, *v.* CHINTAMAN BAJAJI DEV AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

1896. *September* 24.

Decree—Execution—Powers of Court in executing decree—Code of Civil Procedure (Act XIV of 1882), Sec. 244.

The validity of a decree of which execution is sought cannot be disputed in execution proceedings under section 244 of the Code of Civil Procedure (Act XIV of 1882).

APPEAL from the decision of G. Jacob, District Judge of Poona, in darkhást No. 7 of 1893.

In 1874 one Chintaman Bajaji succeeded to the office of manager and trustee of the Chinchwad Savasthán.

In 1880 he instituted Suit No. 1 of 1880 in the Court of the District Judge of Poona against Chintaman bin Vithoba to obtain a declaration that certain mortgages of savasthán property made to the said Chintaman bin Vithoba by Lakshmibai, one of the widows of Dharnidhar the predecessor of Chintaman Bajaji as trustee and manager of the Chinchwad Savasthán, were not binding upon him.

That suit was settled by a consent decree passed on the 13th July, 1880, by which the defendant Chintaman bin Vithoba was to be paid Rs. 23,000 and interest, by annual instalments of

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Rs. 2,000, out of the revenues of the village of Mán, which was part of the savasthán property.

Subsequently Chintaman Bajaji was removed from the office of manager and trustee of the savasthán under a decree of the District Court of Poona, and other trustees were appointed. This decree was, on appeal, confirmed by the High Court. See *Chintaman Bajaji Dev* v. *Dhondo Ganesh Dev*[1].

Chintaman bin Vithoba, in execution of the consent decree in Suit No. 1 of 1880, received Rs. 2,000 a year from the revenues of the village of Mán till the beginning of 1891-92. Payment was then withheld. He died, and in 1893 Sadashiv and Vinayek, his sons and heirs, presented a darkhást (No. 7 of 1893) to the District Court of Poona, praying for an order for the attachment of the revenues of the village of Mán and for payment from them of Rs. 2,195-8-2 in further execution of the decree in Suit No. 1 of 1880.

The trustees of the Chinchwad Savasthán, having been served with notice of the application, objected to the execution of the decree, contending (*inter alia*) that Lakshmibai had no authority to execute the mortgages upon which the consent decree was based; that Chintaman Bajaji had no authority to consent to the decree; and that the consideration for the mortgages had not been paid into the savasthán, and had not been applied for purposes of the devasthán.

For the decree-holders it was argued that those objections could not be taken in execution proceedings under section 244 of the Civil Procedure Code (Act XIV of 1882).

The District Judge held that the objections could be taken in execution proceedings, and upon consideration of the objections rejected the darkhást.

Against this decision the decree-holders appealed to the High Court.

Macpherson (with him *Mahadeo Bhaskar Chaubal*) for the appellant (decree-holder):—We are entitled to have the decree executed. The present trustees cannot question the validity of the acts of Chintaman Bajaji, who was the former trustee

[1] I. L. R., 15 Bom., 612.

and their predecessor in the management of the trust. Chintaman as such trustee consented to the decree in Suit No. 1 of 1880, and the validity of that decree cannot now be impeached in execution. This point is concluded by authority. Section 244 of the Civil Procedure Code does not authorize the impeachment of decrees in execution—*Ram Bhunjun Singh* v. *Mussamut Munder Koer* ; *Ramanoogro Singh* v. *Kishen Kishore Narain Singh*[2]; *Burtoo Singh* v. *Ram Purmessur Singh*[3]; *Sudindra* v. *Budan* ; *Prosunno Kumari* v. *Golabchand*[5].

The District Judge relies upon *Narayan* v. *Chintaman*[6], *Shri Ganesh Dharnidhar* v. *Keshavrav Govind*[7] and *Venubai* v. *Dhondo Ganesh*[8], but in none of those cases was this particular point decided.

Ganpat Sadashiv Rao (with him *Narayan Ganesh Chandavarkar* for respondents:—In Suit No. 1 of 1880, Chintaman Bajaji did not sue as trustee of the savasthán property. This is clear from the terms of the decree in that suit, which provided that in the event of there being obstruction in realizing the money due from the revenues of the village of Mán, the money awarded should be paid by Chintaman Bajaji personally: *vide* the deposition of Chintaman Bajaji in *Chintaman Bajaji* v. *Dhondo Ganesh*[9]. It is thus clear that the liability of Chintaman Bajaji under that decree was personal, and did not devolve upon the succeeding trustees of the devasthán property, *viz.*, the respondents in this appeal.

Objection to the validity of the decree of which execution is sought can be taken under section 244 of the Code of Civil Procedure. Clause (*c*) of that section provides for the raising of questions as to the stay of execution of decrees. This shows that it was intended that the validity of a decree might be impeached in execution—*Trimbak* v. *Govinda*[10]; *Narayan* v.

(1) 23 Cal. W. R., 127.
(2) 23 Cal. W. R., 265.
(3) 24 Cal. W. R., 364.
(4) I. L. R., 9 Mad., 80.
(5) L. R., 2 I. A., 145.
(6) I. L. R., 5 Bom., 393.
(7) I. L. R., 15 Bom., 627.
(8) P. J., 1892, p. 250.
(9) I. L. R., 15 Bom., 612 at pp. 616 and 617.
(10) I. L. R., 19 Bom., 328.

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Chintaman[1]; *Shri Ganesh Dharnidhar* v. *Keshavrav*[2]; *Venubai* v. *Dhondo*[3].

FARRAN, C. J.:—In 1874 Chintaman Bajaji succeeded to the office of manager and trustee of the Chinchwad Savasthán, and in 1880 he instituted Suit No. 1 of 1880 in the Court of the District Judge of Poona against Chintaman Vithoba to obtain a declaration that certain mortgages of savasthán property made to the said Chintaman Vithoba by Lakshmibai, one of the widows of Dharnidhar, the predecessor of Chintaman Bajaji in the management of the Chinchwad Savasthán, were not binding upon him. That suit was settled by a consent decree passed on the 13th July, 1880, awarding the defendant Chintaman Vithoba Rs. 23,000 and interest, by annual instalments of Rs. 2,000, out of the revenues of the village of Mán, which is part of the savasthán property.

Subsequently Chintaman Bajaji was removed from the office of manager and trustee of the savasthán under a decree of the District Court of Poona, and other trustees were appointed. This decree was on appeal confirmed by the High Court—*Chintaman Bajaji Dev* v. *Dhondo Ganesh Dev*[4].

Chintaman Vithoba in execution of the consent decree in Suit No. 1 of 1880 received Rs. 2,000 a year from the revenues of the village of Mán till the beginning of 1891-92. Payment was then withheld, and in 1893 Sadashiv and Vinayek, the sons and heirs of Chintaman Vithoba, deceased, presented darkhást No. 7 of 1893 to the District Court of Poona, praying for an order for the attachment of the revenues of the village of Mán and for payment from them of Rs. 2,195-8-2 in further execution of the decree in Suit No. 1 of 1880.

The trustees of the Chinchwad Savasthán having been served with notice of the darkhást objected (*inter alia*) that Lakshmibai had no authority to execute the bonds upon which the consent decree was based, that Chintaman Bajaji had no authority to consent to the decree, and that the consideration for the bonds

(1) I. L. R., 5 Bom., 393.
(2) I. L. R., 15 Bom., 625.
(3) P. J., 1892, p. 250.
(4) I. L. R., 15 Bom., 612.

was not lawfully paid into the savasthán or was not applied for purposes of the devasthán.

It was contended for the decree-holders that these objections could not be raised in execution proceedings under section 244 of the Civil Procedure Code.

The District Judge upon the authority of *Narayan* v. *Chintaman*[1], *Shri Ganesh Dharnidhar* v. *Keshavrav Govind*[2] and *Venubai* v. *Dhondo Ganesh*[3] held that the objections could be raised in execution proceedings, and upon consideration of the objections rejected the darkhást.

After hearing arguments upon the question whether objections impeaching the validity of the decree of which execution is sought can be entertained in execution proceedings under section 244 of the Civil Procedure Code, we hold that the question must be answered in the negative. We think Mr. Macpherson has rightly argued that, so far as the reported cases show, this question has never before been fully argued and decided by this Court. In *Narayan* v. *Chintaman*[1] objections similar to the objections raised in this case were entertained in execution proceedings by this Court, but the report of the case shows that the point whether such questions could be dealt with under section 244 of the Civil Procedure Code was not raised, and apparently was not considered. In *Shri Ganesh Dharnidhar* v. *Keshavrav Govind*[2] this point did not arise. In *Venubai* v. *Dhondo Ganesh Dev*[3] the present point arose, but was not pressed, and the learned Judges referred to the case of *Narayan* v. *Chintaman* as an authority without noticing that the point whether the validity of a decree of which execution is sought can be disputed in execution proceedings under section 244 was not actually decided in that case.

On the other hand there is strong authority for holding that the validity of a decree sought to be executed cannot be impeached in execution proceedings under section 244. In *Ram Bhunjun Singh* v. *Mussamut Munder Koer*[4] the Calcutta High

(1) I. L. R., 5 Bom., 393.
(2) I. L. R., 15 Bom., 625.
(3) P. J., 1892, p. 250.
(4) 23 Cal. W. R., 127.

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Court held that where the sons of a deceased judgment-debtor, whose estate is declared by the decree to be liable to sale, are admitted on the record as his representatives, they are not entitled in the execution stage to re-open the whole case, and to ask for a decision as to whether the debt incurred by the father was not for the benefit of the estate, or was in some other way invalid under the Hindu law and not binding on the joint family. In *Ramanoogro Singh* v. *Kishen Kishore Narain Singh*(1) the same Court held that the question whether property seized by a judgment-creditor in the hands of his deceased judgment-debtor's son, is held by the son under such circumstances as render him liable for his father's debts, cannot be tried in execution proceedings. These cases were cited and followed in *Burtoo Singh* v. *Ram Purmessur Singh*(2).

The Madras High Court has ruled that a question whether the decree was obtained by fraud or collusion is not one which relates to the execution of the decree, but which affects its very substance and validity, and that such a question can only be raised by a separate suit—*Sudindra* v. *Budan*(3). In *Prosunno Kumari* v. *Golabchand*(4), where the Sebaits of an idol sued to set aside decrees obtained against their predecessor on the ground that they were obtained by fraud or collusion, no objection was raised before the Lords of the Privy Council to the Sebaits seeking their remedy by suit. Had the suit been barred by section 244, Civil Procedure Code, there can be little doubt that the point would have been taken in argument.

It is contended by Mr. Rao that as clause (c) of section 244 provides for the entertainment of questions as to the stay of execution of decrees, therefore it was intended that the validity of a decree might be impeached in execution. We do not think that the words can be rightly understood in this sense. Questions as to the stay of execution refer, we think, to the stay of execution of valid decrees. Mr. Rao has also referred to the case of *Trimbak* v. *Govinda*(5). In that case a decree had been passed against A, and an inám jághir village was attached in execution.

(1) 23 Cal. W. R., 265.
(2) 24 Cal. W. R., 364.
(3) I. L. R., 9 Mad., 80.
(4) L. R., 2 I. A., 145.
(5) I. L. R., 19 Bom., 328

Thereupon A claimed that the attachment should be removed on the ground that the village being service vatan was not liable to attachment. The claim was rejected. A then sued for a declaration that the property was not liable to attachment and sale. The High Court, agreeing with the lower Courts held that no suit would lie, the Court which originally rejected the claim made in the execution proceedings having had jurisdiction under the words of section 244, clause (*c*). In that case the decree of which execution was sought created no charge upon the property, but was merely a personal decree against A.

It is also contended by Mr. Rao that in Suit No. 1 of 1880 Chintaman Bajaji did not sue as trustee of the savasthán property, and that the decree directed that, in the event of there being obstruction in the way of realizing the money due from the revenues of the village of Mán, the money awarded should be paid by Chintaman Bajaji personally. Mr. Rao referred to the deposition of Chintaman Bajaji reported at pages 616 and 617 of I. L. R., 15 Bombay.

"I am the proprietor of the savasthán and my son is the manager. I have been treating the davasthan as my private property. I and Dev (*i. e.*, the deity) are one. So I understand that I am the owner."

In the plaint in Suit No. 1 of 1880 plaintiff described himself as "Shri Chintaman Bajaji Dev Maharaj." He sued as if he considered himself the incarnation of the deity Mangal Murti, and as if all the savasthán property belonged to him. It seems clear that when he undertook to pay the money awarded, he intended to do so out of the savasthán property.

The trustees-respondents did not object in the lower Court that the decree was only against Chintaman Bajaji. They came in as his legal representatives, but they are only his representatives if the decree was passed against him as a trustee for the savasthán property. If the trustees-respondents are not the representatives of the judgment-debtor in Suit No. 1 of 1880, then they are not entitled to come in under section 244, Civil Procedure Code, and if they are his representatives, they cannot dispute the validity of the decree in execution proceedings.

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As no attachment has been placed upon the property, objections cannot be taken under section 278, and the only remedy for the trustees, if they have any, is by regular suit.

For these reasons we are unable to deal with the objections taken by respondents to the validity of the decree in Suit No. 1 of 1880, and we must reverse the decision of the District Court, and direct that the District Court do proceed with the execution of the decree as prayed in the darkhást. Respondents to bear all costs of this appeal and of the proceedings in the District Court.

Order reversed and proceedings remanded.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

1896. *September* 28.

RAMABAI, WIDOW OF RAMKRISHNA BALKRISHNA (ORIGINAL DEFENDANT), APPELLANT, v. RAYA (ORIGINAL PLAINTIFF), RESPONDENT.*

Adoption—Second adoption in the lifetime of first adopted son is invalid—Joint enjoyment of property by an owner and a trespasser—Adverse possession—Trespasser's rights by prescription—Compromise—Family settlement, effect of.

Ramkrishna Yeshwant adopted Raya as his son, but as Raya became sickly and was not expected to live, Ramkrishna afterwards adopted Balkrishna (Raya's brother). Ramkrishna died in 1846; and his widow Ramabai and the two adopted sons continued to live together until her death in 1868, and after her death Raya and Balkrishna still lived together until 1877, when Balkrishna died, leaving a widow Radhabai and a minor son (Ramkrishna). After that event Radhabai and the plaintiff Raya began to live separately.

After Ramkrishna Yeshwant's death in 1846, the lands were registered in Balkrishna's name. In August, 1878, on the application of Radhabai on behalf of her minor son the management of the property was taken from Raya by the Collector, who himself assumed the management. A compromise of the dispute was, however, effected by which the property was to be shared equally between Raya and Ramkrishna, the minor son of Balkrishna, and from 1878 to 1882 the Collector paid them equal moieties of the produce.

In 1890, the plaintiff Raya brought this suit claiming as the adopted son of Ramkrishna Yeshwant either the whole of the property, or in the alternative a moiety of it.

* Second Appeal, No. 91 of 1895.