APPELLATE CIVIL.

Before the Hon'ble Mr. E. T. Candy, C.S.I., Acting Chief Justice, and Mr. Justice Chandavarkar.

1903. June 23.

SIDLINGAPPA BIN IRAPPA AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS, *v.* SHANKARAPPA BIN KARIBASAPPA AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Civil Procedure Code (Act XIV of 1882), section 273—Decree for dissolution of partnership—Money-decree—Execution of money-decree—Attachment of decree for dissolution of partnership.

Certain creditors of a partnership obtained a money-decree against the firm. In execution of their decree they sought to attach and sell a decree for the dissolution of the firm and for the taking of the accounts of the partners and for the incidental reliefs requisite in such decrees, including the appointment of a receiver and a direction to pay the debts of the firm.

Held, that the decree for dissolution could so far be regarded as a money-decree and could therefore be attached but not sold. The proper remedy in such cases is by proceedings under section 273 of the Civil Procedure Code.

APPLICATION against an order in an execution proceeding passed by R. R. Gangolli, First Class Subordinate Judge of Dhárwár.

Application for the attachment and sale of a decree for dissolution of partnership in execution of a money-decree.

One Shankarappa bin Karibasappa brought a suit, No. 486 of 1894, in the Court of the First Class Subordinate Judge of Dhárwár, for the dissolution of a partnership existing between himself and the defendants, (1) Kariyappa bin Chanbasappa Mudhol, (2) Sidlingappa bin Irappa, and (3) Karibasaya bin Mahagundaya. On the 11th June 1897, the Court passed a decree declaring the partnership dissolved as from the 14th January, 1894. The decree contained certain provisions with respect to the dissolution of partnership, of which the following are material for the purpose of this report:—

1. A receiver to be appointed in execution of the decree for the purpose of recovering the outstandings due to and paying the debts and liabilities due by the partnership, for managing and realizing the partnership assets and for all other purposes of the execution of this decree in the manner stated below.

3. The receiver should also take possession of the whole immoveable property belonging to the partnership mentioned in the deed-of-sale, Exhibit 161, and

* Appeal No. 46 of 1903.

other papers bearing on the same and proceed to manage the same by letting it, &c., and credit the proceeds of the same to the account of the partnership, unless the four partners, or any of them, should pay into Court, or to such receiver, the amount of money, being the price of their or his one-fourth share of the said immoveable property as specified by the Commissioner in his statement, Exhibit 157, within six months from the date to be fixed by the Court for this purpose after the appointment of the receiver, in which case the immoveable properties in question should be divided into four equal shares and one share be given to each partner or partners paying the price of his or their respective share. In default of such payment the receiver to proceed as directed in paragraph 10 below.

5. The three partners, that is, the plaintiff and the defendants 1 and 3, should pay into Court the amounts of money due by them respectively as specified in the statements, Exhibits 157 and 158, within a period of not more than six months from the date of the receipt of a notice from the receiver to pay the same and the receiver was directed to credit such payment made by the partners to their respective accounts.

10. If, however, the recoveries made by him as stated above should be found to be insufficient to satisfy all the debts payable by the firm, the receiver to proceed to sell the whole immoveable properties of the partnership at the market price then prevailing or such portions thereof as should still remain in his possession by reason of the non-payment of the price thereof by all or any of the partners in respect of their or his share as provided in paragraph 3 and pay off all the remaining debts out of such proceeds; and if there should be any debts still left unpaid, the amount required for payment and satisfaction thereof to be paid by all the four partners in equal shares, or if any surplus be left, the same to be shared in by all the four partners in equal proportions?

The plaintiff and defendant 1, being dissatisfied with the said decree, preferred cross-appeals, Nos. 110 and 111 of 1897 respectively. The High Court, on the 10th August, 1898, dismissed both the said appeals and confirmed the decree with costs.

While the proceedings in the above suit were pending, one Rachappa bin Karibasappa and his brothers, who were members of an undivided Hindu family and one of whom was Shankarappa, the plaintiff in Suit No. 486 of 1894, brought a suit, No. 31 of 1897, in the Court of the First Class Subordinate Judge of Dhárwár against the partnership firm whose dissolution had been decreed in Suit No. 486 of 1894 for the recovery of a money-debt, namely, Rs. 10,820. Pending the suit, the plaintiff Rachappa died (without leaving any representative) and his name was struck off. The Court passed a decree for the plaintiffs on the 31st July, 1899.

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Subsequently in the year 1902 the plaintiffs in Suit No. 31 of 1897 having applied for execution of the decree by attachment and sale of the decree in Suit No. 486 of 1894 for dissolution of partnership, the defendants-opponents contended that the decree could not be attached according to law, as it was in the hands of an official receiver appointed by the Court as the assets of the dissolved partnership, and further that the previous sanction of the Court was necessary for the attachment of the decree, and as no such sanction was obtained by the applicants, their application for execution should be dismissed. The Court overruled the defendants' contentions and directed that "further orders be made for execution as prayed for by the applicants."

The defendants appealed.

Robertson (with *Mahadeo B. Chaubal*) for the appellants (defendants) :—We first contend that a decree for dissolution and winding up being in the nature of an administration decree is not property that can be attached and sold ; much less can it be regarded as an asset of the partnership. Secondly, we contend that although the partnership property consisted of moveables and immoveables, the decree for dissolution, whereby a receiver was appointed to collect the outstandings and pay off the debts and finally to distribute the surplus, if any, between the partners, cannot be regarded as anything more than a mere money-decree and, therefore, even if attachable, the order for the sale of such decree is illegal, section 273 of the Civil Procedure Code : *J. Kahn* v. *Alli Mahomed* [1] ; *Mahommed Noorooddeen* v. *Mahommed Zohuruddeen*.[2]

Shamrav Vithal for the respondents (plaintiffs) :—A decree for dissolution is nowhere exempted in section 266 of the Civil Procedure Code. Inasmuch as the partnership property consisted of shops and houses, &c., a decree relating to such property cannot be a mere money-decree. In *Gopal Nanasket* v. *Joharimal* [3] all decrees which are not mere money-decrees are held to be attachable and saleable property.

(1) (1892) 16 Bom 577. (2) (1893) 21 Cal. 85.
(3) (1891) 16 Bom. 522.

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CANDY, C. J. (ACTING) :—We think that the Subordinate Judge, First Class, was wrong in directing further orders to be made for execution as prayed for by the applicants.

In Suit No. 486 of 1894 a decree was passed for the dissolution of a certain partnership consisting of four partners. The dissolution was declared to date from the 14th January, 1894, and a receiver was appointed with power to collect the assets and pay the debts of the firm which had been dissolved. In that case the decree of the Subordinate Judge, which was confirmed by the High Court, gave elaborate directions to the receiver as to how he was to act. By clause 3 he was to take possession of the whole immoveable property belonging to the partnership, and on any partner paying the price of one-fourth share in the same, he was to deliver such share into the possession of that partner. It has not been contended that any partner has paid his share. It was further provided by clause 10 of the decree that in default of such payment the receiver was, if he required funds to satisfy all the debts payable by the firm, to proceed to sell the whole immoveable properties and pay off all the remaining debts out of such proceeds. If any surplus was left out of the proceeds, on the payment of all the debts, the same was to be shared by all the four partners in equal proportion.

There was a further clause (No. 5) dealing with certain specified sums which were to be paid by three of the partners to the receiver. One of those partners was Shankarappa, and he was ordered to pay Rs. 4,512-5-7½. It is asserted before us that that money has not been paid. This same Shankarappa with his undivided brothers representing a Hindu family now seeks to execute a decree in a suit brought by Rachappa, the late managing member of the family, for a debt due by the said firm, and they seek to obtain execution by the attachment and sale of the above described decree which had been passed in the suit for dissolution of partnership.

We think, having regard to the principle laid down by Mr. Justice Farran in the case of *J. Kahn* v. *Alli Mahomed Haji Umar*,[1] followed in the case of *Mahommed Zohuruddeen* v. *Mahom-*

(1) (1892) 16 Bom. 577.

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med Noorooddeen,[1] it is very doubtful whether such an execution can be allowed. An officer of the Court is now executing that decree, and collecting the assets of the late firm and paying the debts of the firm, the decree-holders in the latter suit ranking as creditors of that firm. But it is admitted before us that the decree in the suit for dissolution of partnership can be so far regarded as a money-decree, and that therefore it can be attached but cannot be sold. This being so, it is clear that the applicants' remedy is not by a sale of the decree, but by proceeding under the provisions of section 273 of the Civil Procedure Code: see the case of *Gopal* v. *Joharimal*.[2]

We therefore vary the order of the Subordinate Judge, and direct that the procedure laid down in section 273 be followed. The order as to sale will be set aside. Each party to bear his own costs in this Court.

Order varied.

(1) (1893) 21 Cal. 85. (2) (1891) 16 Bom. 522.

APPELLATE CIVIL.

Before the Hon'ble Mr. E. T. Candy, C.S.I., Acting Chief Justice, and Mr. Justice Chandavarkar.

1903. *June* 24.

A SHOP STYLED IN THE NAME OF BAKATRAM NANURAM BY ITS OWNER MINALAL SHADIRAM (ORIGINAL DEFENDANT 1), APPELLANT, *v.* KHARSETJI JIVAJISHET AND ANOTHER (ORIGINAL PLAINTIFF AND DEFENDANT 2), RESPONDENTS.*

Limitation Act (XV of 1877), schedule II, article 91—Bond—Suit to have the bond adjudged void—Specific Relief Act (I of 1877), section 39—Limitation.

Article 91, schedule II, of the Limitation Act (XV of 1877), applies to a suit brought under section 39 of the Specific Relief Act (I of 1877) to have a bond adjudged void and to have it delivered up and cancelled.

APPEAL from the decision of D. G. Gharpure, First Class Subordinate Judge of Dhulia in the Khándesh District, in Civil Suit No. 412 of 1898.

* Appeal No. 2 of 1902.