

Therefore I hold that Abdul Ali acquired the shares that were expressed to be transferred to him.

The objection that section 257A of the Civil Procedure Code stands in the way of those who claim under Abdul Ali is in my opinion unsound. The transactions clearly do not come within the words of the section. We must therefore vary the order of Russell J. so far as it determines that any of the transfers were inoperative.

The respondents 2, 3 and 4 in appeal 1484 must get their costs of that appeal from the appellants. In appeal 1479 the appellants must get their costs from the respondents.

*Order varied.*

Attorneys for appellants in Appeal No. 1484 and for respondents Nos. 1 to 5 in Appeal No. 1479:—*Messrs. Ardeshir, Hormusji, Dinshaw & Co.*

Attorneys for appellants in Appeal No. 1479 and for respondents Nos. 2 to 4 in Appeal No. 1484: *Messrs. Mirza and Mirza.*

B. N. L.

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## APPELLATE CIVIL.

*Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and  
Mr. Justice Batchelor.*

JAMSETJI MANEKJI KOTVAL (ORIGINAL PLAINTIFF), APPELLANT, v.  
HARI DAYAL (ORIGINAL DEFENDANT 1), RESPONDENT.\*

1907.

November 28.

*Civil Procedure Code (Act XIV of 1882), sections 232, 244, 372 and 647—  
Decree for an injunction to protect land—Sale of the land—Subsequent suit  
by the purchaser for an injunction—Execution of the former decree  
cannot lie.*

A obtained an injunction against B restraining him from obstructing A in the exercise of his right of way to his (A's) land over B's land. A subsequently sold his land to C. B similarly obstructed C. C then brought a suit against B for an injunction in terms similar to that formerly obtained by A. B contended that C's remedy, if any, was by way of execution of the decree obtained by A.

\* Appeal from order No. 18 of 1906.

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DAFAL.

*Held*, that as the injunction did not run with the land, there was in the circumstances of the case, no bar to the plaintiff's suit.

APPEAL against an order passed by Dayaram Gidumal, District Judge of Surat, remanding a suit to the Court of B. G. Desai, Second Class Subordinate Judge of Surat.

One Atmaram Gopal, who was the owner of a certain piece of land, brought a suit against the defendants for a permanent injunction restraining the latter from causing him obstruction in passing over to his land through their adjoining land and obtained a decree. Subsequently Atmaram Gopal sold the land to Jansetji Manekji Kotval and the defendants having caused obstruction to him also, he brought the present suit for a permanent injunction.

The defendants disputed *inter alia* the plaintiff's right to an injunction.

The Subordinate Judge dismissed the suit on the ground that the plaintiff should proceed in execution of the decree obtained by his vendor.

On appeal by the plaintiff the District Judge remanded the case for the following reasons:—

It is perfectly true that an injunction does not run with the land for if the defendants were to die, the remedy, being a remedy *in personam*, would die with them. But it is obvious that, if an injunction is given in favour of A as regards the right of way and the dominant tenement is assigned to B the right of way passes to Band B cannot say "I am the holder of the right under the assignment; but I can nevertheless insist on filing a second suit and harassing the defendants again." The defendants' heirs or assignees are not their representatives within the meaning of sections 134 and 244, Civil Procedure Code; but the plaintiffs' heirs or assignees are such representatives and *nemo debet bis vexari pro una et eadem causa*. (See Broom's Legal Maxims, p. 321, and I. L. R. 13 All. 98.)

The only question therefore is whether a new cause of action has arisen to the assignee of the old decree-holder who obtained the injunction. I must reply in the negative. The right of way claimed is the same. The defendants are the same.

The permanent injunction already obtained was alive when the suit was brought,—and the mere fact that the person obstructed is not the old plaintiff does not matter. The assignee is his representative and he can execute the decree. It is said, section 232, Civil Procedure Code, does not apply, but if

that be held inapplicable, section 372 read with section 647 (as amended), Civil Procedure Code, does.

Considering all the circumstances, however, while I hold that a fresh suit is not maintainable, I direct (following I. L. R. 32 Cal. 332—335) that in the interests of justice the suit may be taken as an application to the Court for executing the decree, and remand the case under section 562, Civil Procedure Code, for trial on the merits. Costs to abide the result.

Against the said order of remand the plaintiff preferred an appeal.

*K. N. Koyaji*, for the appellant (plaintiff) :—The District Judge erred in applying sections 372 and 647 of the Civil Procedure Code to the circumstances of the present case: *Goodall v. The Mussoorie Bank, Limited* <sup>(1)</sup>, *The Collector of Muzaffarnagar v. Husaini Begam* <sup>(2)</sup>, *Gocool Chunder Gossamee v. Administrator-General of Bengal* <sup>(3)</sup>, *Harish Chandra Tewary v. Chandpore Company, Limited* <sup>(4)</sup>.

An injunction is a personal remedy and does not run with the land. A purchaser from a party cannot be made a party to execution proceedings: *Sakaral v. Bai Parvatibai* <sup>(5)</sup>, *Dahyabhai v. Bopalal* <sup>(6)</sup>, *Vithal v. Sakharam* <sup>(7)</sup>. The present suit is therefore not barred and we need not and cannot proceed to execute our vendor's decree.

*M. N. Mehta*, for respondent (defendant 1) :—A perpetual injunction was decreed in favour of plaintiff's vendor. Therefore the plaintiff can, as the representative of his vendor, enforce the decree in execution. We admit there is a difficulty in applying sections 372 and 647 of the Civil Procedure Code to the present case, still section 232 will apply. All the rights under the former decree have passed to the plaintiff by his purchase.

JENKINS, C. J. :—This is a suit for an injunction. It has been decided by the District Court that the suit must fail as being barred by section 244 of the Civil Procedure Code. The bar is said to arise out of the fact that the vendor to the present

(1) (1837) 10 All. 97.

(2) (1895) 18 All. 86.

(3) (1880) 5 Cal. 726 at p. 731.

(4) (1903) 30 Cal. 961 at p. 964.

(5) (1901) 26 Bom. 583.

(6) (1901) 26 Bom. 140.

(7) (1890) 1 Bom. L. R. 854.

1907.

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MANEKJI  
&  
HARI  
DAYAL.

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DAYAL.

plaintiff, of the land sought to be protected by the injunction, obtained in another suit an injunction to the effect now sought.

Therefore it is said the plaintiff's remedy is not by way of suit but of execution of the former decree.

The Judge of the lower appellate Court appears to rely on sections 372, 647 and 244 of the Civil Procedure Code. Mr. Mehta has felt that he could not support the decree on that ground. So he has had recourse to section 232, but at the outset he is met with the difficulty that there has been no transfer of the decree.

An injunction does not run with the land and therefore there is, in our opinion, in the circumstances of this case, no bar to the plaintiff's suit.

The order must, therefore, be reversed and the case must be remanded to be heard on the merits.

The plaintiff must get the costs of the appeal to this Court and the lower appellate Court.

*Order reversed. Case remanded.*

G. B. R.

## CRIMINAL REVISION.

*Before Mr. Justice Chandavarkor and Mr. Justice Knight.*

*In re LAKSHMIDAS LALJI.\**

1907.

December 9.

*Criminal Procedure Code (Act V of 1898), sections 195, 476—Indian Penal Code (Act XLV of 1860), sections 193, 210—Sanction to prosecute—Refusal by Subordinate Judge—District Judge on appeal may institute proceedings under section 476—Court—Interpretation.*

An application was made to a Subordinate Judge for sanction to prosecute L for offences punishable under sections 193 and 210 of the Indian Penal Code (Act XLV of 1860). The Subordinate Judge refused to grant the sanction. On appeal, the District Judge varied the order and directed the lower Court to prosecute L for an offence under section 210 of the Indian Penal Code.

*Held*, that the District Judge had jurisdiction to pass an order under section 476 of the Criminal Procedure Code (Act V of 1898); that it was not compe-

\* Criminal application for Revision No. 269 of 1907.