

1890.

MORÁ JOSHI
v.
RÁMCHANDRA
DINKAR
JOSHI.

must establish such claim by separate suit." These remarks apply to the present suit. The defendant, on the plaintiff paying him his mortgage-debt, must give up the property mortgaged to him by the plaintiff; and then, if he has any claim by purchase, he must, if so advised, bring a suit on that claim. The only question, therefore, to be decided in the present suit is as to the amount to be paid by the plaintiff for redemption. As that question has not been considered by the lower appellate Court, which has erred in its decision on the preliminary issue of law decided by it against the plaintiff, we reverse its decree and remand the appeal, in order that a decree for redemption may be passed for whatever amount may be found due, with a proper proviso for foreclosure on default of payment. All costs hitherto incurred to be dealt with in such decree.

APPELLATE CIVIL.

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

1890.
June 11.

HUSEIN AHMAD KA'KA', (ORIGINAL PLAINTIFF), APPELLANT, v. SAJU MAHAMAD SAHID, (ORIGINAL DEFENDANT), RESPONDENT.*

Decree—Execution—Practice—Procedure—Decree transmitted for execution to another Court—Power of such Court to decide whether execution is barred by limitation—Civil Procedure Code (Act XIV of 1882), Sec. 223 et seq.

Where a Court makes an order for execution of a decree and transmits the decree for execution to another Court, the latter Court has no power to determine whether execution is barred by limitation. The order for execution made by the transmitting Court is binding on the parties until reversed on appeal.

It is otherwise, however, where the transmitting Court has made no order for execution, but has merely transmitted the decree and the certificate of non-satisfaction.

This was a second appeal from a decision of S. Hammick, District Judge of Surat.

The facts of the case, as stated in the District Judge's judgment, were as follows:—

The plaintiff obtained a decree against one Hafisji Hasam Mahamad in the Court of Small Causes at Rangoon on the 3rd May, 1883. In December, 1883, Hafisji Hasam Mahamad died. No satisfaction having been obtained under the decree, a notice was issued on the 12th November, 1886, under section 248 of the

1890.

 HUSEIN
 AHMAD
 KAKA
 v.
 SAJU
 MAHAMAD
 SAHID.

Civil Procedure Code (Act XIV of 1882), to be served on the deceased judgment-debtor's legal representative. He, however, did not appear or show cause under section 249 of the Code, and the Rangoon Court on 2nd February, 1887, declared that the decree was revived, and ordered that it should be executed. This decree was transferred for execution to the First Class Subordinate Judge's Court at Surat, and a *darkhást* for execution was presented at Surat on the 22nd April, 1887.

On behalf of the defendant it was contended that the decree was time-barred.

The Subordinate Judge overruled the objection, and ordered execution to issue, being of opinion that the plea of limitation could not then be raised. On appeal, the District Judge reversed the lower Court's order. He was of opinion that the plea of limitation could be raised in execution, and that execution of the decree was barred.

The plaintiff preferred a second appeal to the High Court.

Máneksháh Jehángirsháh for the appellant (plaintiff):—The District Judge was wrong in holding that the Court executing the decree could determine whether the execution of the decree was barred. Having regard to the Privy Council Case of *Mungul Pershad Dichit v. Grija Kant Lahiri*⁽¹⁾ the order of the Court transmitting the decree that the decree was revived was conclusive and is binding on the parties until reversed in appeal.

Motilál Mugatlál Munsi for the respondent contended that the Court executing the decree could determine the point of limitation.

SARGENT, C. J.:—The District Judge has held that the Subordinate Judge to whom the decree was transmitted for execution, had power to determine whether the execution was barred. This would be so where no order had been made for execution by the Court transmitting the decree, and merely the decree and certificate of non-satisfaction are sent, as was the case in *Leake v. Daniel*⁽²⁾, followed in *Nursing Doyal v. Hurryhur Saha*⁽³⁾; but

(1) S. I. A., 123; S. C. I. L. R., 8 Calc., 51.

(2) 10 W. R., p. 10.

(3) I. L. R., 5 Calc., p. 897.

J-49929

1890.

HUSEIN
AHMAD
KAKÁv.
SAJU
MAHAMAD
SAHID.

where such order, as in the present case, has already been made by that Court, it is binding on the parties until reversed on appeal—*Mungul Pershául Dichit v. Griju Kant Lahiri*⁽¹⁾.

We must, therefore, reverse the order of the Court below, and restore that of the Subordinate Judge. Appellant to have his costs throughout.

Order reversed.

(1) S I. A., p. 123 ; I. L. R., 8 Calc., 51.

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Candy.

1890.

June 23.

KA'SHIRA'M MULCHAND, (ORIGINAL DEFENDANT), APPELLANT, v.
HIRA'NAND SURATRA'M, (ORIGINAL PLAINTIFF), RESPONDENT.*

Dekkhan Agriculturists' Relief Act (XVII of 1879), Sec. 3, Clauses (x) and (z)
—*Suit to redeem a pledge—Appeal.*

A suit for the redemption of a chattel is one falling under clause (x) of section 3 of the Dekkhan Agriculturists' Relief Act (XVII of 1879). In districts in which the Act is in force this clause is applicable to cases in which neither party is an agriculturist.

The word "mortgaged" in clause (z) of section 3 of the Act applies only to immoveable property.

A suit was brought to redeem an ornament pledged for a sum below Rs. 500. The suit was filed in the Court of the First Class Subordinate Judge at Sátára, where Act XVII of 1879 is in force. The Subordinate Judge passed a decree for redemption of the pledge.

Held, that though neither of the parties was an agriculturist, the case fell under Chapter II of the Act, and that no appeal lay against the decree of the Subordinate Judge.

Held, further, that the Special Judge had revisional jurisdiction in the matter.

THIS was an application under section 622 of the Code of Civil Procedure (Act XIV of 1882).

One Hiráchand Suratrám filed a suit against the applicant in the Court of the First Class Subordinate Judge at Sátára to redeem a gold ornament, alleging that it had been pledged with the applicant for Rs. 150.

* Application, No. 237 of 1889.