

permit it to go on the record would be to allow a confessional statement to a Police officer to be proved against an accused person. That the law forbids. To my mind the medium by which it is sought to prove such a statement does not alter the matter. The question is "To whom was the statement made"? The answer is that the statement was made to a Police officer. It was no doubt repeated to a Magistrate, but the mere repetition cannot render capable of proof a statement which as made the law excludes.

K. MCI. K.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Coyajee.

DEEKAPPA MALLAPPA HUBLI (ORIGINAL JUDGMENT-CREDITOR), APPELLANT v. CHANBASAPPA RACHAPPA NEELI AND OTHERS (No. 1 ORIGINAL JUDGMENT-DEBTOR AND DECREE-HOLDERS), RESPONDENTS^o.

1925.

February 13.

Decree—Execution—Civil Procedure Code (Act V of 1908), sections 63 and 73—Attachment before judgment—Order passed by Court at Dharwar—Certain of properties attached sold in execution of decrees obtained in Hubli Court of inferior jurisdiction—Sale proceeds deposited in Hubli Court—Application made to Dharwar Court for transfer of sale proceeds—Competency of Court to entertain application.

In a suit in the Court of the First Class Subordinate Judge of Dharwar, the appellant had obtained an attachment before judgment on certain properties of respondent No. 1 on July 12, 1922. This attachment was confirmed by the decree that was passed on January 23, 1923. Two other creditors of the respondent had obtained prior decrees against the respondent in the Court of the Second Class Subordinate Judge at Hubli. In execution of these decrees the judgment creditors got certain of the properties attached before judgment by the Dharwar Court sold in March and July 1923 and the sale proceeds were lying in the Hubli Court. The appellant made an application to the First Class Subordinate Judge at Dharwar that the sale proceeds should be sent for from the Hubli Court. The First Class Subordinate Judge directed the appellant to move the District Judge for transfer of the sale proceeds to his Court. The appellant having appealed to the High Court,

^oFirst Appeal No. 344 of 1923.

1925.
EMPEROR
v.
SHAFI
AHMED.

1925.

DEEKAPPA
MALLAPPA
v.CHAN-
BASAPPA
RACHAPPA.

Held, that it was competent for the First Class Subordinate Judge at Dharwar to call for the sale proceeds to his Court from the Hubli Court, to be rateably distributed by him amongst the decree-holders who had qualified themselves under section 73.

Patel Nararaji Morarji v. Haridas Navalram⁽¹⁾ and *Nilkanta Rai v. Gosto Behari Chatterjee*⁽²⁾, discussed.

FIRST appeal against the decision of D. A. Idgunji, First Class Subordinate Judge at Dharwar.

Proceedings in execution.

The facts material for the purposes of this report are fully stated in the judgment of his Lordship the Chief Justice.

Nilkant Atmaram, for the appellant.

A. G. Desai, for respondent No. 2.

S. B. Jathar, for respondent No. 3.

MACLEOD, C. J.:—The appellant in this case obtained a decree on January 23, 1923, in Suit No. 201 of 1921 in the Court of the First Class Subordinate Judge of Dharwar against one Chanbasappa Rachappa, respondent No. 1. He had obtained an attachment before judgment on certain properties of the respondent on July 12, 1922. This attachment was confirmed by the decree. Other creditors of the respondent had obtained decrees against him in the Court of the Second Class Subordinate Judge at Hubli. The present opponent No. 2 obtained a decree in the Hubli Court on June 23, 1922, and attached certain of the respondents' property on June 29, 1922. That property was sold in execution by the Hubli Court on March 16, 1923. Opponent No. 3 obtained a decree in the Hubli Court on July 9, 1922, and in execution of that decree certain other property of the respondent was sold on July 14, 1923. All the properties sold in execution of these two decrees had been already attached before judgment in the Suit No. 201 of 1921.

⁽¹⁾ (1893) 18 Bom. 458.

⁽²⁾ (1917) 46 Cal. 64.

It will be seen, therefore, that in spite of the attachment having been levied on the respondents' property by the First Class Subordinate Judge's Court, the properties were sold in execution of decrees of the Second Class Subordinate Judge's Court, and the sale proceeds were lying in that Court. The present appellant made an application to the First Class Subordinate Judge of Dharwar that the sale proceeds should be sent for from the Second Class Subordinate Judge's Court. The Judge first made an order that the sale proceeds should be sent to his Court, and the claimants were referred to section 63, Civil Procedure Code, to have their claims settled. The same day he appears to have withdrawn that order and told the applicant that he should move the District Judge for the transfer of the sale proceeds to the First Class Subordinate Judge's Court, referring to the decision in *Patel Naranji Morarji v. Haridas Navalram*⁽¹⁾. In that case some property had been first attached in execution of a decree of the Second Class Subordinate Judge of Surat and was thereafter attached in execution of a decree of the First Class Subordinate Judge. The Second Class Subordinate Judge's Court sold the property, and the holder of the decree passed by the First Class Subordinate Judge then applied to the Second Class Subordinate Judge to set aside the sale on the ground that it was invalid under section 285 of the Code of 1882, as having been made while the attachment levied by the First Class Subordinate Judge was pending, and on the Second Class Subordinate Judge's refusal to do so, he applied to the High Court under its extraordinary jurisdiction. It was held that the sale was good, and that the applicant had no right to ask the Second Class Subordinate Judge to set aside the sale as made without jurisdiction, although possibly he might have applied to the District Judge to transfer

1925.

DEEKAPPA
MALLAPPA
v.
CHAN-
BASAPPA
RAGHAPPA.

⁽¹⁾ (1893) 18 Bom. 458.

1925.

DEKKAPPA
MALLAPPA
v.
CHAN-
BASAPPA
RACHAPPA.

the proceeds realized by the sale to the First Class Subordinate Judge's Court.

The section of the Code of 1908 corresponding with section 285 of the Code of 1882 is section 63 (1). Sub-section (2) of that section has been added probably in consequence of the decision to which I have just referred. It runs as follows:—

“Nothing in this section shall be deemed to invalidate any proceeding taken by a Court executing one of such decrees.”

The appellant then applied to the District Court, but the District Judge considered there was nothing in the Civil Procedure Code to authorise a District Court to order the transfer of these sale proceeds, although he referred to the decision in *Nilkanta Rai v. Gosto Behari Chatterjee*⁽¹⁾. He further considered that it seemed to him better that the proceedings which had been begun in the Court at Hubli should continue to an end, and that when that end had been reached, those parties, if any, who might be aggrieved by the outcome, should seek such remedy as they might be able to find in the Code of Civil Procedure.

The appellant then filed this appeal under section 47 of the Code against the decision of the Subordinate Judge. Although it is not clear on the record what the Subordinate Judge decided, it may be taken that he refused to accede to the appellant's application to send for the sale proceeds from the Hubli Court, and advised him to move the District Judge. The appellant has made respondents to the appeal not only the original judgment-debtor, but also the two decree-holders under the decrees I have referred to in the Hubli Court. An objection has been taken by them that no appeal lies, and we consider that there was considerable justification for that contention. But we can entertain the appeal as if it had originally taken the form of an

⁽¹⁾ (1917) 46 Cal. 64.

application under our extraordinary jurisdiction, as we consider that the facts now established before us are very similar to the facts in the case already referred to, viz., *Nilkanta Rai v. Gosto Behari Chatterjee*^(a). There the petitioner had obtained a money decree against his judgment-debtor in the Court of the Subordinate Judge. A writ of attachment was issued and served, whereupon a claimant appeared but his objection was overruled. The claimant next proceeded to sue for the cancellation of the order and obtained an injunction restraining the petitioner from proceeding with the execution of his decree till the suit had been decided. Thereupon the Subordinate Judge stayed the sale and proceeded to dismiss the execution case. The latter was discontinued not by reason of default on the part of the decree-holder, but at the instance of an unsuccessful claimant who instituted a suit to contest the validity of the order in the claim case. Meanwhile proceedings were taken by the opposite party, another creditor of the same judgment-debtor, for realization of his dues. The sale at his instance was fixed for April 20, 1917. On the application of the petitioner the Subordinate Judge wrote a letter to the Munsif for the stay of the sale. The Munsif received the letter after the sale had taken place. Thereupon the petitioner applied to the Subordinate Judge to attach the sale proceeds deposited in the Munsif's Court and to distribute them rateably. The Subordinate Judge having, on June 9, 1917, dismissed this application, the petitioner moved the High Court and obtained a Rule. It will be seen that the petitioner was not entitled to rateable distribution under section 73 of the Code, which provides that where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for the execution of decrees for

1925.

DEEKAPPA
MALLAPPA
v.
CHAN-
BASAPPA
RACHAPPA.

(a) (1917) 46 Cal. 64.

1925.

DEEKAPPA
MALLAPPA
v.
CHAN-
BASAPPA
RACHAPPA.

the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be rateably distributed among all such persons. The petitioner had not applied for execution of his decree to the Court which held the assets. Indeed, he was not competent to make such an application, as the decree obtained by him in the Court of the Subordinate Judge could not possibly be executed by the Munsif. Nor had he been able to obtain the benefit of the principle recognised in section 63. If the petitioner had been able to apply in time to the Subordinate Judge under section 63, the sale might have been held in his Court. That event, however, had not happened. The sale, however, had been actually held by the Munsif, and was a valid sale, under section 63 (2), though the Court found that in the events which had happened neither section 63 nor section 73 applied. Then the Judges considered whether in the actual circumstances of the case it was still possible for the Court to give relief to the petitioner. The Court of the lower grade had actually held the sale in ignorance of the fact that proceedings in execution had already been taken in the Court of a higher grade, and that the property brought to sale was subject to a legally subsisting attachment effected in that Court. Their Lordships, after referring to *Patel Naranji Morarji v. Haridas Navalram*⁽¹⁾ and *Bykant Nath Shaha v. Rajendro Narain Rai*,⁽²⁾ said (p. 69):—

“If we compare the observations in the two cases just mentioned, it becomes obvious that Sir Charles Sargent pointed out the correct procedure to be followed in cases of this character, namely, the Subordinate Judge is not to direct the Munsif to transmit the proceeds to his Court, but should move the District Judge to have the proceeds so transferred.”

As a matter of fact Sir Charles Sargent said that the applicant, and not the First Class Subordinate Judge,

⁽¹⁾ (1893) 18 Bom. 458.

⁽²⁾ (1885) 12 Cal. 333.

might possibly have applied to the District Judge for a transfer of the sale proceeds. However that may be, the High Court made the following order :—

“Rule obtained by the applicant is made absolute, and the order of the Subordinate Judge is set aside. It is directed that the sale proceeds should be transferred from the Court of the Munsif to the Court of the Subordinate Judge to be rateably distributed by him amongst the decree-holders who had qualified themselves under section 73 of the Civil Procedure Code including the present petitioner.”

I can see no difference between the facts of that case and the facts in this case. The property was sold by the Hubli Court, when it had already been attached by an earlier order of the First Class Subordinate Judge. The present appellant could not apply to the Hubli Court for rateable distribution, and if the contention of the present opponents were to prevail, he would lose entirely the fruits of his attachment. That cannot be a correct exposition of law which should prevail. I think the first order made by the Subordinate Judge was right, for I see no reason why the application for transfer of the sale proceeds should be made to the District Judge.

Treating this as an application under our extraordinary jurisdiction, we make an order that the sale proceeds along with the Darkhast, pending in the Hubli Court for rateable distribution, should be transferred from the Hubli Court to the Court of the First Class Subordinate Judge of Dharwar, the sale proceeds to be rateably distributed by him amongst the decree-holders who have qualified themselves under section 73 of the Civil Procedure Code. The appellant to have his costs against the 1st respondent.

COYAJEE, J.:—I agree.

Order set aside.

J. G. R.

1925.

DREKAPPA
MALLAPPA

v.

CHAN-
BASAPPA
RACHAPPA.