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APPELLATE CIVIL.

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Before Mr. Justice Ghose and Mr. Justice Geidt.

RAHIMUDDI SIRKAR *v.* LOLL MEAH.* [22nd May, 1902.]

Civil Procedure Code (Act XIV of 1882) ss. 244 (cl. c), 278, 280, 288—Suit—Decree—"Parties to the suit," meaning of—Claim to attached property.

When a suit is dismissed against one of the parties, but decreed against the rest, the former is not a party to the suit in relation to the execution, discharge or satisfaction of the decree within the meaning of s. 244 of the Code of Civil Procedure.

THE plaintiff, Mahomed Rahimuddi Sirkar, appealed to the High Court.

The plaintiff had sued the defendant No. 4 and her minor children, the defendants Nos. 1 to 3, for recovery of a certain sum of money due on a bond. The suit was decreed against the defendant No. 4, but was dismissed against the minor defendants, Nos. 1 to 3. In execution of the decree obtained, the plaintiff attached a share of a taluq as belonging to the defendant No. 4. The defendants Nos. 1 to 3 objected to the attachment **[697]** claiming the attached property as belonging to them and not to their mother, the defendant No. 4. Their objection was allowed, and the plaintiff appealed from the order allowing the objection. The appeal was dismissed on the ground that no appeal lay against the order, as it was passed on a claim preferred under s. 278 of the Civil Procedure Code.

The plaintiff then instituted the present suit for a declaration that the attached property was liable in execution of his decree, as belonging to defendant No. 4. The minor defendants pleaded, *inter alia*, that s. 244 of the Civil Procedure Code was a bar to the present suit.

The first Court decreed the suit. Thereupon the defendants appealed to the Subordinate Judge, who, without going into the merits of the case, dismissed the suit on the preliminary ground that under s. 244 of the Civil Procedure Code no separate suit lay. The plaintiff appealed to the High Court.

Moulavi Z. R. Zahid (for *Moulavi Siraj-ul Islam*), for the appellant.

Babus *Basant Kumar Bose* and *Akhoy Kumar Banerjee*, for the respondents.

GHOSE AND GEIDT, JJ. The question raised in this case is whether the action of the plaintiff is barred by the provisions of s. 244 of the Code of Civil Procedure.

It appears that the plaintiff had brought a suit against the defendants Nos. 1 to 3, as also against defendant No. 4, for the recovery of a certain sum of money. The suit was decreed against the defendant No. 4, but dismissed against the other defendants. In execution of that decree, a certain property was attached by the plaintiff, the decree-holder, as belonging to defendant No 4, whereupon an objection was preferred by and on behalf of the defendants Nos. 1 to 3, upon the ground that the property belonged to them. The objection was allowed by the executing Court. Against that order, an appeal was preferred by the plaintiff; but the Appellate Court held that the order made by the lower Court

* Appeal from Appellate Decree No. 112 of 1899, against the decree of Babu Mati Lal Haldar, Additional Subordinate Judge of Tipperah, dated the 18th of November 1898, reversing the decree of Babu Jagat Chandra Dass, Munsiff of Tipperah, dated the 18th of July 1898.

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being an order under s. 278 of the Code of Civil Procedure, no appeal lay to the higher Court, and [698] accordingly it was dismissed. Thereupon, the present suit was brought to have it declared that the property in question belonged not to defendants Nos. 1 to 3, but to defendant No. 4, and it was in this suit that the plea was raised by the defendants that it was barred by the provisions of s. 244 of the Code of Civil Procedure.

The Subordinate Judge, in reversing the judgment of the Court of First Instance, relied upon the case of *Punchanun Bundopadhya* v. *Rabia Bibi* (1), being of opinion that the defendants Nos. 1 to 3 being parties to the suit previously brought by the plaintiff, the question now raised between the plaintiff on the one hand and the said defendants on the other, should have been decided under s. 244 of the Code, and therefore no separate suit would lie. As to the case of *Punchanun Bundopadhya*, referred to by the Subordinate Judge, all we need say is that it has very little bearing upon the question we have to decide in the present case. There is, however, a very recent decision of this Court in the case of *Ram Prosad Pandey* v. *Jagannath Ram Marwari* (2), which is directly in point, and this case seems to be well supported by, among others the case of *Kameshwar Pershad* v. *Run Bahadur Singh* (3) and also by the case of *Kalka Prasad* v. *Basant Ram* (4). And what has been held in the case of *Ram Prosad Pandey* is that, when an action is dismissed against one of the defendants, but decreed against the others, he should not be considered as a party to the suit within the meaning of cl. (*c*) of s. 244 of the Code of Civil Procedure; that his objection to the attachment of any property claimed to be his own would fall under ss. 278 and 280 of the Code, and not under s. 244, and that his remedy against any order passed against him would be by a regular suit under s. 283 of the Code. The words of cl. (*c*) of s. 244 may perhaps be read as supporting the view adopted by the Subordinate Judge; but we think that a more liberal construction than the restrictive construction that has been put upon these words ought to be put upon them; and we think that, when a suit is dismissed against one of the parties, but decreed against the rest, that party could not be regarded as a party to the suit [699] in relation to the execution, discharge or satisfaction of the decree within the meaning of s. 244 of the Code. That is a view which well accords with common sense, and, we think, we should adopt it.

We accordingly set aside the judgment of the Court below and send the case back for trial on the merits.

Costs will abide the result.

Case remanded.

29 C. 699.

Before Mr. Justice Pratt and Mr. Justice Geidt.

GOOROO DAS MUSTAFI *v.* SARAT CHUNDER MUSTAFI.*

[7th May, 1902.]

Hindu Law—Will, construction of—Words of inheritance—O putra pautradi meaning of—Hindu widow's estate—Estate for life—Intention of the testator—Power given to adopt, effect of.

* Appeal from Original Decree No 50 of 1900, against the decree of Babu Hemangoo Chunder Bose, Subordinate Judge of Hooghly, dated the 25th of September, 1899.

(1) (1890) I. L. R. 17 Cal. 711.
(2) (1901) 6 C. W. N. 10.
(3) (1886) I. L. R. 12 Cal. 458.
(4) (1901) I. L. R. 23 All. 346.