

applied are a little too forcible, there can be no doubt that the plaintiff allowed the sale-proceeds to be withdrawn for his own advantage."

The learned vakil for the respondent contends that this negatives the first Court's finding. We are not prepared to accept this view as correct. It is true that the District Judge tones down the stringency of the remark as to the plaintiff's conduct but that is done in a very qualified way. The learned Judge merely says that the strictures are "a little too forcible." That being so, we think that the case must go back to the Lower Appellate Court in order that it may determine whether the finding of the first Court upon this point in the passage of its judgment quoted above is correct. If it is not, the conclusion arrived at by the Lower Appellate Court will stand. If it is not, the deduction of Rs. 1,318-14 allowed will have to be disallowed.

The second point as was practically conceded is concluded by the finding of fact arrived at by the Lower Appellate Court.

As to the third point the learned pleader for the respondent very properly conceded that upon the authority of the case of *Rameswar Koer v. Mahomed Medi Hossein Khan* (1) and the case of the *Maharaja of Bhartpur v. Rani Kanno Dei* (2) interest must be allowed at the stipulated rate up to the date of realization; but he contended that as the first Court did not allow that, and there was no appeal against the decree of the first Court on that point by the plaintiff, it was not open to the plaintiff to raise that question now. That no doubt is so, but as the decree of the Lower Appellate Court must, upon the first ground taken in this appeal, be set aside and the case sent back to that Court and a new decree will have to be made by the Lower Appellate Court after the remand; if that decree is not a mere re-affirmance of the decree already made, but is to be a different decree by reason of the [961] disallowance of the deduction of Rs. 1,318, in that case interest will have to be allowed at that stipulated rate up to the date of realization.

The decree of the Lower Appellate Court is accordingly set aside and the case sent back to that Court to be disposed of with reference to the directions contained in this judgment. Costs will abide the result.

Appeal allowed. Case remanded.

30 C. 961.

APPELLATE CIVIL.

HARISH CHANDRA TEWARY v. CHANDPORE COMPANY, LIMITED.*
[25th March, 1903.]

Execution of decree—Civil Procedure Code (Act XIV of 1882) ss. 234, 372—Decree for money—Limited Company, debts and liabilities of—Transfer of the properties of the Company to a third party—Dissolution of Limited Company—Legal representative.

A obtained a decree for money against a certain limited Company. The Company had sold all their properties to a third person who again sold his rights to another limited Company. On an application for execution of the

* Appeal from Original Order Nos. 160 and 161 of 1902 against the order of Jadu Nath Das, Subordinate Judge of Murshidabad, dated Jan. 25, 1902.

(1) (1898) I. L. R. 26 Cal. 39; L. R. 25 I. A. 179. (2) (1900) I. L. R. 23 All. 181; L. R. 28 I. A. 35.

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decree against the latter Company, substituting them on the record as the legal representatives of the former Company on their dissolution :—

Held, that the decree could not be enforced against the latter Company, ss. 234 and 372 of the Code of Civil Procedure not being applicable to the present case.

[Fol. 31 Mad. 464—4 M. L. T. 190 ; Ref. 39 Cal. 220.]

APPEALS by the decree-holder, Harish Chandra Tewary.

These appeals arose out of two applications for execution of decrees. One Harish Chandra Tewary obtained two decrees for money, one dated the 18th April 1898, and the other the 18th June 1898, against the Patkabari Indigo Planting and Estates Company, Limited. The decree-holder alleged that this Company had, on the 28th November 1898, sold all their properties, with the liabilities, to Sir Seymour King, Bart., who again sold the said properties and debts to Chandpore Company, Limited, on the 20th November 1898. It was further alleged that the Patkabari [962] Indigo Planting and Estates Company was dissolved in England on the 13th March 1900. Under these circumstances, the decree-holder applied to execute his decrees against the Chandpore Company, Limited, alleging that they were the legal representatives of the Patkabari Indigo Planting and Estates Company. The Chandpore Company objected to the execution against them mainly on the grounds that they were not the legal representatives of the Patkabari Indigo Planting Estates Company, Limited, and that under the purchases, as alleged by the decree-holder, they were not liable to pay these debts. The learned Subordinate Judge of Murshidabad allowed the objection, and rejected the petition for execution of the decree.

Dr. Ashutosh Mookerjee (Babu Tarak Nath Chuckerbutty with him), for the appellant. S. 372 of the Civil Procedure Code, which is applicable to a suit is also applicable to execution proceedings having reference to s. 647 of the Code. Even if s. 372 be held to be inapplicable to execution proceedings, the Court has power to make such a substitution : *Narendra Nath Pahari v. Bhupendra Narain Roy* (1). Assuming that the first Company had not ceased to exist, but its right and liabilities were transferred to the present Company, we had a right to proceed for execution against the present Company under s. 372 of the Civil Procedure Code. Question is whether Chandpore Company is the legal representative of the Patkabari Company. Execution proceedings are nothing but a continuation of the suit, and the word suit is not to be limited to the proceedings up to the decree : *Shyama Charan Mitter v. Debendra Nath Mookerjee* (2). Suit includes not only the execution proceedings, but even proceedings for setting aside a sale : *Monmohini Dasi v. Lakhinarain Chandra* (3). The case of *Goodall v. The Mussoorie Bank, Limited* (4), no doubt goes against my contention, but that case was decided before the explanation to s. 647 of the Code was added.

Babu Dwarka Nath Chuckerbutty for the respondent. S. 372 of the Code of Civil Procedure has no application to the present case. The tenure has been sold away, and now there is a personal decree only. It could not be said that there was a [963] devolution of property. The subject matter of the suit was not property, and there was no transfer. There is no authority for saying that s. 372 of the Code is

(1) (1895) I. L. R. 23 Cal. 374, 391.

(2) (1900) I. L. R. 27 Cal. 484, 486.

(3) (1900) I. L. R. 28 Cal. 116.

(4) (1887) I. L. R. 10 All. 97.

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applicable to execution proceedings. It has been held in the case of *The Collector of Muzaffarnagar v. Husaini Begam* (1) that s. 372 of the Code is not applicable to execution proceedings. Upon the facts stated in their petition, the decree-holders are not entitled to execute their decrees against my client: see *Dhuronidhur Sen v. The Agra Bank* (2). There is no appeal to this Court. S. 244 of the Code of Civil Procedure applies to any question in execution arising between the parties to the suit or their representatives, and my client has not been made a party, therefore s. 244 of the Code does not apply. Under s. 588, cl. (21) of the Code, orders disallowing objections under s. 372 have been made appealable, but an order declining to make an order under s. 372 is not appealable. The case of *Norendra Nath Pahari v. Bhupendra Narain Roy* (3) relied upon by the other side, is distinguishable from the present case; that was a case of mortgage which being an interest in property, it could be said that there was devolution.

Dr. Ashutosh Mukerjee in reply.

MACLEAN, C. J. There is no dispute as to the facts, which are accurately stated in the first portion of the judgment appealed against. I need not recapitulate them.

The question is whether the decrees can be enforced against the Chandpore Company, Limited, assuming that that Company took over the liabilities of the Patkabari Indigo Planting and Estates Company, and as the legal representatives or assignees from the latter Company. To effect this object, the decree-holder says that for the purpose of enabling him to execute the decree the question arises in the execution proceedings; he is entitled to proceed either under section 234 or 372 of the Code of Civil Procedure, and to have the Chandpore Company substituted in the execution proceedings in the place of the Indigo Company. I am clear that section 234 does not apply. We can [964] hardly say that here the judgment-debtor has died. We do not know whether before the Indigo Company was dissolved in England provision was made for the payment of its debts.

As regards section 372 I am at least doubtful whether it applies to execution proceedings. But assuming it does, the present case is not within it. That section applies to the "assignment, creation or devolution of any interest," which must, I think, mean interest in the property, the subject-matter of the suit. There was no such assignment here: if there were any assignment at all, it was of the liability of the Indigo Company to pay the decree-holder's debt. This would not have been properly the subject of an assignment, nor the creation or devolution of an interest: if there were any such contract, it probably took the form of a covenant by the Chandpore Company, to pay the debts of the Indigo Company or to indemnify the latter against them. This does not appear to me to be the assignment, creation or devolution of an interest within the meaning of section 372.

The appeal is dismissed with costs. This decision covers appeal 161 which is also dismissed with costs.

STEVENS, J. I concur.

Appeals dismissed.

(1) (1895) I. L. R. 18 All. 86.
 (2) (1879) I. L. R. 5 Cal. 86.

(3) (1895) I. L. R. 23 Cal. 374.