upon an amount which he had so applied. On these grounds I think we ought not to interfere with the decision of the Courts below, and that this appeal ought to be dismissed with costs.

1869

PARBS NATH MUKHOPADHYA v. KISTO MOHAN SAHA.

MARKBY, J.—I am of the same opinion. Upon the first point, which is I think an extremely clear one, I do not wish to say anything. With regard to the second point, I also entirely adopt the proposition of law as laid down in *Kunhya Sing* v. *Tooydun Sing* (1). What I consider the learned Judges have there laid down, are general rules which would regulate the satisfaction of a decree by a judgment-debtor to his judgment-creditor. On the other hand, I am not at all inclined to say that the Court which has to execute the decree, is entirely without discretion in the matter as to whether or not it will allow a part payment by the execution-debtor. Under ordinary circumstances, the execution-debtor, in my opinion, would not be allowed to make such a part payment. Under ordinary circumstances, the execution creditor would not be called upon to accept it. But on the other hand, there may be circumstances under which a Court may say that this is a proper case in which part payment ought to be allowed, and the execution-creditor asked to accept. As I understand the judgments of the lower Courts in this case, that is what has been done; and that having been done, we ought to uphold those judgments, unless it has been shown to us that this was not a case in which that discretion may be exercised. So far as I can see, I think that it was a case in which such discretion might well be exercised; and having been exercised by both the lower Courts, I think there is no ground for our interfering with those judgments.

Before Mr. Justice L. S. Jackson and Mr. Justice Markby.

DEBKUMARI BIBI (PETITIONER) *v.* RAM LAL MOOKERJEE (OPPOSITE PARTY.)*

1869
June 17.

Ground for Rejecting Application—Act VIII. of 1859, *s.* 243—*Sale—Judgment-Debtor.*

The fact of the judgment-debtor's possessing properties other than the one attached, is no ground for rejecting an application, under section 243 Act VIII. of 1859, for the appointment of a manager.

To save a particular property from sale, a judgment-debtor must shew the value and condition of other properties in her possession, and the Judge must consider how and by what arrangement such a disposal of different portions of such property may be made, so as to avoid the sale of the property already attached.

Baboo *Ashutash Dhar* for petitioner.

Baboos *Gopal Lal Mitter* and *Ambika Charan Banerjee* for opposite party

*Miscellaneous Regular Appeal, No. 168 of 1869, from a decree of the Judge of Hooghly, dated the 31st March 1869.

(1) 7 W. R., 20.

1869

DEBKUMARI BIBI v. RAM LAL MOOKERJEE.

JACKSON, J.—This is an appeal against an order made by the Zilla Judge refusing to make an order at the instance of a judgment-debtor, under section 243, Act VIII. of 1859. It appears that the respondent, Ram Lal Mookerjee, holds a dur-mokurrari tenure of an estate held in mokurrari by the judgment-debtor, Debkumari. Debkumari having failed to make due payment of her rent to the zemindar, Ram Lal, in order to protect his own sub-tenure, paid the rent, and subsequently sued her, and obtained a decree against her for the amount. In satisfaction of that decree, he has attached the very property of which she holds the mokurrari, and of which he is her lessee.

Upon this Debkumari petitioned the Judge, setting forth that she had this and other property which had been granted to her for her maintenance, and proposing to place this and the other estates in question under the management of the Court; so that, after the payment of a small yearly sum for her maintenance, the profits should be carried to account towards the payment of the sum due under the decree; and thus, in the course of a few years, the whole amount could be satisfied.

The Judge has refused to make such an order, apparently upon two grounds. The first of those grounds is, that the judgment-debtor he says has other property, that is, other property than the property under attachment; and secondly he says that, as the profits of the mehal in question are only rupees 650 annually, if the prayer of the judgment-debtor were acceded to, the decree-holder would be kept out of his just dues for a long period, and would have to run the risk of bad collections and similar losses in the profits.

Now it seems to me, that the circumstance of the judgment-debtor being possessed of other property, instead of being a ground for refusing this prayer, ought rather to have been a ground for complying with it, because, if those were properties of inferior value, and such as would be more conveniently dealt with for the purpose of saving this one, then that would be a good reason for staying the sale, and making such use of those other properties. The particular property under attachment is, I presume, the most valuable that this lady possesses. The Judge's observation that the decree-holder would have to run the risk of bad collections and the like, suggests to my mind that he has forgotten what the real relative position of the parties is. The risk of bad collections is one which the decree-holder has already taken upon himself, because he and not the judgment-debtor is the party who is to collect the rents, and she has only to receive from him a fixed reserved rental every year. It seems, under these circumstances, that an arrangement by which the decree-holder, instead of paying his lessor, should pay himself annually, either after reserving, or without reserving, a sufficient sum for her maintenance, is one of obvious convenience.

An appeal against an order made under this section is one which the Appellate Court must always have great difficulty in dealing with. I felt that difficulty so strongly, that I was compelled to dissent from the opinion of the Full Bench, in which it was held that such an appeal would lie: *Hanuman*

Prasad v. *Ajdhia Prasad* (1) From the circumstances of this particular case, the difficulty is not so great as it often would be. But even here I feel that it would be quite impossible for us to make any specific order; and under these circumstances I think all that we can do is to set aside the order of the Judge positively refusing to make an order under section 243, and to remit the case to him with instructions, that the sale be stayed for two months, in order to enable the judgment-debtor to make a fresh application to him for an order under section 243. It would be for her to show what the value and condition of the other property in her possession may be; and for the Judge to consider by what means, or by what arrangement, such a disposal of different portions of her property can be made, as, if possible, to avoid the sale of the property now under attachment. There are circumstances in the case which make it especially desirable that such an arrangement should be come to. We cannot shut our eyes to the fact that the decree-holder holds a tenure subordinate to that of his judgment-debtor, and that he may not improbably desire to get her out of the way, with the view, of course, to get her tenure into his own hands. At any rate I think it necessary, that the Judge should have an opportunity of re-considering this matter, and making such order as the justice of the case may require.

1869

DEBKUMARI BIBI v. RAM LAL MOOKERJEE.

MARKBY, J.—I certainly must agree that it is not easy for us to deal with appeals from orders passed under section 243. It is very difficult, it seems to me, for this Court to ascertain what the relative situation of the parties is. Under the circumstances of this case, I think the order proposed by Mr. Justice Jackson is the right one; namely, that the case should be sent back, in order that a fresh application should be made, and that in the meantime the sale should be stayed.

Before Mr. Justice Bayley and Mr. Justice Hobhouse.

RAM CHANDRA CHOWDHRY (ONE OF THE DEFENDANTS) v. BRAJANATH SARMA AND OTHERS (PLAINTIFFS.)*

1869 *June* 18.

Suit for Possession—Award—Limitation Act XIV. of 1859, *s.* 15—*Oral Evidence.*

In a suit for recovery of possession of certain bramatar land of which the defendant had dispossessed the plaintiffs by virtue of an award passed under section 15, Act XIV. of 1859, declaring his right by purchase, the defence set up was that the deed of purchase was a forgery, and that the suit was barred by lapse of time.

Held, that although the plaintiffs failed to prove their title deeds, yet their title was sufficiently established by oral evidence of long possession prior to their dispossession two or three years previous to suit.

Baboo *Nalit Chandra Sen* for appellant.

Baboo *Kali Krishna Sen* for respondents.

*Special Appeal, No. 452 of 1869, from a decree of the Additional Subordinate Judge of Mymensing, dated the 4th December 1868, affirming a decree of the Moonsiff of that district, dated the 21st September 1867.

(1) 1 B L. R., F. B., 7.