

Before Mr. Justice Kemp and Mr. Justice E Jackson.

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Jany. 29. UTS HAB NARAYAN CHOWDHRY AND ANOTHER (PLAINTIFFS v. CHITTRA
BAKA GUPTA AND ANOTHER (DEFENDANTS).*

*Registration Act (XX of 1866), s. 55—Specially registered Bond—Summary Decree
set aside no Bar to Regular Suit—Cause of Action.*

A decree obtained by the plaintiff upon a specially registered bond under Act XX of 1866, and set aside under s. 55 of that Act, held not to bar a regular suit upon the bond.

On the 17th April 1871, the following plaint was filed in the Court of the Subordinate Judge of Fureedpore:—

Utshab Narayan Chowdhry and Madhus udan Chowdhry, plaintiffs v. Srimati Chittra Raka Gupta, widow of the late Ram Narayan Mazumdar and Umakant Mazumdar, a co-debtor and a concluding party with the above defendant, defendants.

Suit to set aside a miscellaneous order of this Court, dated the 4th July 1870, by which the Gupta defendant, who is one of the two defendants, bound by a decree under s. 53, Act XX of 1866, has been released; to have the Gupta defendant declared liable under the tamassuk (bond) of the 9th Jaishti 1274 (22nd May 1867) connected with the decree aforesaid; and to obtain a decree for money on declaration of the Gupta defendant, and the undermentioned properties pledged by the said tamassuk as being liable for the same. The claim is laid at Rs. 6,327-3, or Rs. 4,250 principal, covered by tamassuk, plus Rs. 2,077-3 interest.

The tamassuk adverted to was registered under s. 52, Act XX of 1866, the date of redemption was fixed for 25th Baisakh 1275 (5th May 1868). Subsequently we sued the two defendants in this Court under s. 53 of the Act quoted, and obtained a decree. The Gupta defendant then prayed for a review of judgment, but her application was rejected, whereupon we executed the said decree, and in the execution case the Gupta defendant again appeared as an objector in collusion with the colluding defendants, when this Court released her from liability to the aforesaid tamassuk; in dissatisfaction of that order, we appeal to the Judge of Zilla Dacca, who has rejected the appeal, holding that there could not lie any appeal under s. 55 of the above mentioned Act, our cause of action, therefore, has arisen from the date when the defendant was released from liability.

We beg to file with this plaint our principal documents, viz., tamassuk, &c., as per list

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The following order was passed by the Subordinate Judge of Fureedpore:—

“To-day this plaint was laid before the Court, and was inspected in the presence of plaintiffs’ pleader, Baboo Bisto Charan Roy. Now when a final decision is passed in execution of a decree by a Court, on the evidence adduced by both parties, under the authority given to it by s. 55, Act XX of 1866, there does not appear to exist any law or practice for bringing a fresh suit against such decision. As therefore the plaint does not disclose any proper cause of action, it is fit to be rejected under s. 32 of the Code of Civil Procedure, Act VIII of 1859. In this view it is ordered that this plaint be rejected, the plaintiffs bearing their own costs.

* Regular Appeal, No. 190 of 1871, from a decree of the Subordinate Judge of Fureedpore, dated the 19th May 1871.

Against this order the plaintiffs appealed to the High Court.

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Baboos *Srinath Das* and *Bhagabatti Charan Ghose*, for the appellants, contended that the suit was not for a money-decree against the Gupta defendant, but for a decree for a sale of the properties pledged. The decree contemplated by [ss. 52, 53, 54, and 55 of Act X of 1866 is a simple money-decree, and not the determination of any lien on property; s. 55 merely bars an appeal from an order passed by the Court executing a decree passed under s. 53 of the Act. As against the defendant Omakant Mazumdar, the reasoning of the Subordinate Judge is wholly inapplicable. The order rejecting the plaint as against both the defendants is wrong. The suit ought to be remanded for trial on the merits.

Baboo *Grija Sanker Mazumdar*, for the respondents, contended that the plaint was obscure and did not disclose any cause of action. He referred to *Jugti Sahoo and another, Petitioners* (1), and *Kristo Kisshore Ghose v. Brojo-nath Mazumdar* (2).

KEMP, J. (after briefly stating the facts)—An appeal has been preferred on the ground, 1st, that the lower Court is wrong in holding that the Civil Courts have no jurisdiction in entertaining a suit for the enforcement of a lien on landed property mortgaged under a bond specially registered under the Registration Law; and, 2nd, that s. 55 of Act XX of 1866 is no bar to the entertainment of the present suit.

There is much in this plaint which might be eliminated and this, the pleader for the appellants, Baboo Srinath Das admits, but substantially the prayer of the plaint is to have the defendants and more particularly the Gupta defendant declared liable and her property liable to sale for the liquidation of the debt secured by the bond of the 9th Jaishti 1274 (22nd May 1867), that is to say, to make the property pledged liable for the debt. The bond was specially registered under the provisions of s. 52, Act XX of 1866 (reads ss. 52, 53, and 55.)

It appears that the plaintiffs obtained in the first instance a decree on this specially registered bond against both the defendants, Chittra Raka Gupta and Umakant Mazumdar. The Gupta defendant prayed for a review of judgment, but her application was rejected, and the plaintiffs executed their decree under the provisions of the latter portion of s. 53. Upon this the Gupta defendant again appeared as an objector, and the Court released her from liability under the decree under the provisions of s. 55. The plaint goes on to say that, in dissatisfaction with that order, the plaintiffs appealed to the Zilla Judge and the Judge, rejected the appeal, holding that, under the provisions of s. 55, no appeal would lie. The pleader for the

(1) 6 W. R., Mis., 121

(2) 6 W. R., Civ. Ref., 11.

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appellants, Baboo Srinath Das, admits that this was a right decision, and that no appeal lies from an order under s. 55, but the main contention in this case is whether, although under s. 55, the Gupta defendant has been released from liability under the decree, a regular suit will not lie for the purpose for which this suit has been mainly brought, stripping it of all surplusage, namely, to enforce the lien of the plaintiffs under the bond as against the property pledged. As against the defendant, Umakant Mazumdar, it is clear that the Subordinate Judge was wrong in rejecting the plaint, because there has been no order with reference to line under s. 55 of Act XX of 1866. The pleader for the respondents is forced to admit that there are no rulings of this Court governing the present case and that it is a new point; and the rulings quoted by him appear to us to have no application whatever to this case. The first is the case of *Jugti Sahoo and another, Petitioners* (1). In that suit, in which L. S. Jackson, J., was sitting alone, this point did not arise; he was pressed to give an opinion upon it, but distinctly refused to give one. The other case cited was that of *Kristo Kisshore Ghose v. Brojo-nath Mazumdar* (2), Peacock, C. J., and L. S. Jackson, J.; in which case those learned Judges held that in applications to the Court under s. 53, Act XX of 1866, the Court ought not to summon the defendant, the intention of the Act being that the applicant should merely, on production of the obligation and the record duly signed, obtain a decree for the sum mentioned in the petition, or any less sum which may appear to be due, with interest and costs, and that it was competent to the Court, under s. 55, on a representation by the judgment-debtor after decree, to set aside the decree and stay or set aside execution. Therefore, as admitted by the pleader for the respondents, there are really no decisions of this Court touching on this point.

It appears to us clear that the plaintiff is entitled to institute a regular suit, which he has done, to have the question tried, whether the property pledged in this bond is liable for the debt covered by the bond. All that s. 55 enacts is that the Court may, under special circumstances, set aside the decree obtained in a summary way by proceedings under the provisions of Act XX of 1866, and those sections of it which apply to specially registered bonds, and that there shall be no appeal against such orders; but s. 55 does not enact that a party shall not be entitled to bring a regular suit, as the plaintiffs have done in this case, to follow the property pledged to them and to make the said mortgaged property liable for the debt.

As against the defendant Umakant Mazumdar, against whom the plaintiffs have obtained a money-decree, there can be no doubt that they are entitled to bring a suit to follow and make the property pledged liable for the debt; and as against the other defendant, the female defendant Chittra Raka Gupta, although under s. 55 of Act XX of 1866, she has, under special circumstances, been declared entitled to have the summary decree against her

(1) 6 W. R., Mis., 121.

(2) 6 W. R., Civ. Ref., 11.

set aside and execution stayed, and although there is no appeal against such an order, there is nothing in the law to prevent the plaintiffs from bringing a regular suit to establish the fact that the Gupta defendant and her property are liable under the bond.

In this view of the case we think that the Subordinate Judge was wrong in refusing to try this case.

We reverse his order and remand the case for him to try it on the merits. Cost to follow the result.

JACKSON, J.—The Subordinate Judge in this case has rejected the plaint under s. 32, Act VIII of 1859, holding that it does not disclose any proper cause of action. I understand that he means by that to refer specially to the words of the plaint which ask the Court to set aside the miscellaneous order passed under s. 55 of Act XX of 1866, and to have the present defendants declared liable under the former decree. So far, I think, there may be something in the order of the lower Court rejecting the plaint, on the ground that there is no cause of action to set aside these orders; but it does not follow that the plaintiffs cannot now bring a suit to have the defendants, and, the property pledged, declared liable under the bond. It may be a question hereafter, how far the former decision may bind the parties, but I am unable to say that, as the case stands, there is no cause of action. The orders passed under s. 55, Act XX of 1866, have to my mind the effect of altogether setting aside the decree which a person could, under the provisions of s. 53, of that Act, have obtained in a summary way. S. 55 allows the Court which is executing the decree to stay execution, or to set aside execution altogether, but it does not appear to me that the effect of this is to prevent the plaintiffs from seeking their remedy in a regular suit, and although there is no appeal against an order passed under s. 55, there is nothing in the section to say that the party is precluded from urging his rights in a regular suit.

I therefore concur in reversing the order of the lower Court and remanding the case for trial on its merits.

Before Mr. Justice Lock and Mr. Justice Ainslie.

MUKANDI LAL DUBEI AND OTHERS (PLAINTIFFS) v. L. G. CROWDY AND ANOTHER (DEFENDANTS).*

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Occupancy, Right of—Ryot—Act X of 1859, s. 6—Act VIII of 1869 (B. C.), s. 6.

From 1824 to 1832 the defendant held certain lands as cultivator; from that year to 1839 he obtained a lease from the zemindar, of the village in which the lands were situate; from 1839 to 1843, he continued to hold these lands as cultivator;

*Special Appeals, Nos. 790 and 791 of 1871, from the decrees of the Judge of Bhagulpore, dated the 10th April 1871, reversing the decrees of the Subordinate Judge of that district, dated the 12th March 1870.