

Before Mr. Justice Loch and Mr. Justice Ainslie.

BANWARI LAL SAHU AND ANOTHER (DECREE-HOLDERS) v. BABOO GIRDHARI SING (JUDGMENT-DEBTOR).*

1871
Nov. 22.

Execution of Decree—Attachment—Act VIII of 1859, s. 243—Appointment of Manager.

Mr. Piffard (with him Mr. C. Gregory and Munshi Mahomed Yousaff) for the appellants.

Mr. Woodroffe (with him Baboo Hem Chandra Banerjee) for the respondent.

THE facts of the case sufficiently appear in the judgment of

LOCH, J.—In this case it appears that certain estates, the property of Baboo Girdhari Sing, judgment-debtor, were attached in execution of a decree held by certain Mahajuns, Lalji Sahu and others; and that by orders of the lower Court, made about two years ago, under section 243, Act VIII of 1859, a manager was appointed to make collections from these mehals and to pay off debts due by the debtor. Subsequent to this arrangement the judgment-debtor filed a list of other properties which belonged to him, and prayed that as he had several other debts outstanding, the Court would order the manager to take charge of these other mehals and from their proceeds to liquidate his debts. An order, in conformity with this prayer, was issued by this Court. After this order was made Baboo Banwari Lal and others, who held decrees against the debtor Girdhari Sing, applied to the Court for attachment and sale of the property of the judgment-debtor in execution of their decrees. But the Court, instead of issuing any order for attachment or making any order for sale, directed that the manager should pay the interest upon these debts for two years, and that after that period when certain Bhurna-leases would expire, there would be sufficient funds to pay off the debts of these creditors in the course of about five or six years, and the Subordinate Judge rejected the application.

An appeal has been preferred to us against this order, and the objections taken in appeal are two; first, that the order is contrary to law, there having been no attachment made by the decree-holders; and, secondly, that the data upon which the calculation of assets is based are altogether erroneous, having been assumed by the Subordinate Judge without any evidence being before him and being adopted from the statements made by the debtor, and further that the Subordinate Judge estimated the assets of the estates higher than the debtor has done himself, but upon no sufficient ground.

It appears to me that the order of the lower Court must be set aside, because it is clear that till an attachment is made on the application of the decree-holders, the Court cannot proceed under the provisions of section 243 to appoint a manager; further, the refusal to make an attachment when applied for by a decree-holder is not a light matter, for it may prove of serious detriment

* Miscellaneous Regular Appeals, Nos. 219 and 220 of 1871, from the orders of the Subordinate Judge of Tirhoot, dated the 22nd April 1871.

1871 to him, because should any other party attach the property, his right as first attaching creditor to be paid off his whole debt from the proceeds of sale must be lost to him.

BANWARI LAL
SAHU

v.
BABOO GIR-
DHARI SING.

Then, on the second ground, it is clear that the Subordinate Judge, in calculating the assets, has not gone upon any evidence, but has been satisfied with the statement made by the debtor as to the value of his property. This is not sufficient, in a case like the present, when a man is almost hopelessly involved in debt, and who, in order to save his estate from sale, may be expected to make the most favourable returns of his income.

I think the appellants in this case must be allowed to make an attachment according to law, and after making that attachment the Court may proceed under the law either to order the sale of the property, or under the provisions of section 243 to appoint a manager, should that be considered to be the best course both for the creditor and for the debtor.

Reference has been made to an order of this Court issued in July last (1) in which the Court stated that two or three years should ordinarily be the limit for which a property should be put under the charge of a manager. The Court does not, I apprehend, intend by these words to limit the time strictly to that period in all cases, but requires thereby that in each case the Judge who directs the appointment of a manager should exercise a proper discretion with reference to all the circumstances of the case in calculating the time in which the debts may be paid off. If after a year or two it appears that the collections are insufficient to meet the claims of the creditors, there is no reason why an application should not be made to the Court for the removal of the manager and for the sale of the property.

I think, therefore, that the order of the lower Court must be set aside, and the appeal be decreed. Parties will pay their own costs.

AINSLIE, J.—I concur in thinking that the refusal to order the attachment was wrong, and that the case must go back to the lower Court in order that the judgment-creditor may be allowed to attach any property of the debtor he may point out. The lower Court, if advised to proceed under section 243, will then be guided by the rules laid down in the Circular Order of the 11th July last (1). I quite concur with Mr. Justice Loch in thinking that that rule is not to be taken as prescribing any rigid limit of time during which a property is to continue under the management of a manager. With reference to the magnitude of the estate and the length of time the debts have been allowed to run on, I think no substantial injury would be done to the judgment-creditors in these cases by an extension of time, and as pointed out by my learned colleague, if the result of the management shows that there has been miscalculation of the assets, the creditors can always apply to the Court to set aside the order appointing the manager, and to proceed under other sections relating to execution of decree.

(1) 7 B. L. R., High Court Rules, &c., 10.