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Court, for it has been lately determined by a decision *In the matter of Duli Chund* (1) that the subject-matter in dispute in a suit is the subject-matter for which the plaint is brought, and is not limited in the case of an appeal to the amount which the decree may have awarded as between the parties to the appeal. It appears to me that, if we put any other construction than that which I have mentioned upon the words, we should make the section have an operation which could not have been contemplated by the Legislature, for it would cause the appeal to shift from one Court to the other, merely by such lapse of time as would suffice to make an amount which when decreed fell below Rs. 5,000 grow by the increment of the interest to a sum above Rs. 5,000. It appears to me very clear that the order which is now appealed against is an order made in the course of a suit, the original subject-matter of dispute in which was by the admission of the parties an amount less than Rs. 5,000, and I think for that reason, under s. 22, Act VI of 1871, the appeal lies to the District Court, and not to this Court.

The application must be rejected with costs.

Appeal dismissed (2).

PRIVY COUNCIL.

P. C.*
1872
March 21.

THE GENERAL MANAGER OF THE RAJ DURBUNGAH UNDER THE COURT OF WARDS (DEFENDANT) *v* MAHARAJAH COOMAR RAMAPUT SING (PLAINTIFF).

[On appeal from the High Court of Judicature at Fort William in Bengal,

Acts X and XI of 1859—Sale in Execution of Estate of Deceased—Decree Inter Partes.

See also 15 B.L.R. 147 12 B.L.R. 103

A sued, under Act X of 1859, the widow of Z, as widow of Z and guardian of Z's son, for arrears of rent due by Z. He obtained a decree in 1862 against the widow as Z's representative, but it was declared that Z's son was not liable, on the ground that he had been adopted into another family. In a regular suit, A obtain-

* *Present* :—THE RIGHT HON'BLE SIR JAMES COLVILE, LORD JUSTICE JAMES, SIR MONTAGUE SMITH, AND SIR ROBERT COLLIER.

(1) 9 B. L. R., 195.

(2) See *Rai Dhanpat Sing Bahadur* v. *Madhumati Debia*, 9 B. L. R., 197.

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ed a decree declaring Z's son to be the heir of his natural father Z. Certain estates of the deceased were then, in 1867, put up for sale under Act XI of 1859, in execution of A's decree for rent, and A became the purchaser. The certificate stated that the sale was of the right and interest of the widow, and that it took place under the decree in the regular suit. B, the holder of a prior decree for rent against Z, having failed to obtain execution against the same property, then sued A and Z's son for a declaration that he was entitled to sell the property, on the ground that it had come to Z's son as Z's heir, and that only the interest of the widow (who had no interest) had been purchased by A. *Held* (reversing the decision of the High Court) A was entitled to the property.

The case of *Issan Chunder Mitter* v. *Buksh Ali Soudagur* (1) approved of

IN November 1858, the respondent obtained a decree against Gourpershaud Mahata for Rs. 14,636 for arrears of rent, which was affirmed on appeal in 1861.

Gourpershaud having died, the appellant brought a suit under Act X of 1859 against "Mussamut Chooharoo Kooer as mother and guardian of Hurpershaud, the minor son and heir of Gourpershaud" to recover Rs. 11,000 for rent due by Gourpershaud in his life. The lady answered that Hurpershaud was not liable, he having been adopted into another family, and that she was in possession of her husband's estate. The Collector on the 12th November 1862, holding that that was a good defence, gave judgment for the plaintiff, and ordered the widow to pay, but concluded, by declaring the property, which it should be ascertained Gourpershaud had left, liable.

The respondent having applied for execution of his decree against the widow and son, the same objection to the liability of the son was raised, and he was held not liable, but the decree was, on the 16th May 1863, ordered to be executed against the properties of the judgment-debtor.

For some time neither decree-holder succeeded in getting any satisfaction.

On the 13th April 1865, the appellant filed a suit against the widow and son, setting forth the following facts, *viz.*, that Gourpershaud and Sheopershaud were joint; that Sheopershaud died first childless, leaving a widow Buchun, whereby, according to Mithila law, Gourpershaud, would take the whole property; that Buchun then, without authority from her husband,

(1) Marsh. Rep., 614.

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adopted Hurpershaud according to *kritima* form; that that could give him no right as Sheopershaud's son, nor discharge him from liability as Gourpershaud's; and the plaint sought to enforce the decree against the property which had been joint. A decree was given in favor of the plaintiff in that suit, which decree was affirmed on appeal on the 29th May 1867.

On the 27th November 1867, the Collector put up the properties mentioned in the decree for sale under the old execution under Act XI of 1859, and the appellant became the purchaser, and obtained certificates on 10th January 1868. These certificates stated the sale to be of the right and interest of Mussamut Chooharoo Kooer in satisfaction of the decree under Act X of 1859, but on the 13th May 1868, an addition was made, saying that the estate mentioned in the certificate had been sold by auction by virtue of the decree in the regular suit by the manager above-mentioned.

The respondent took no steps to enforce his decree for rent until after the decision in the appellant's suit, declaring the property subject to seizure; but, on the 17th September 1867, he applied for execution against those estates. The appellant objected to this on the ground that he had bought the property, and nothing remained to sell in execution, and the objection was allowed to prevail.

On the 7th August 1868, the respondent brought the present suit against the appellant and Hurpershaud to have his right declared to sell the lands of Hurpershaud, to whom he contended they had come as heir, the appellant having purchased only the interest of the widow, who in fact had no interest. The Subordinate Judge of Tirhoot held that the appellant's execution was not against the widow personally, but against her husband's estate and that the sale was in fact of Gourpershaud's property, and dissmissed the suit. The High Court (1) on the 28th May 1869 reversed that decision, and held that the appellant had purchased only the right and interest of the widow, and that the plaintiff was entitled to sell the lands of Gourpershaud as being the property of his son.

(1) Kemp and Glover, JJ.

Sir. R. *Palmer*, Q.C., and Mr. *Doyne*, for the appellant, contended, on the authority of *Issan Chunder Mitter* v. *Buksh Ali Soudagur* (1), that the decree obtained by the appellant was against the widow in her representative capacity only, and that the sale conveyed all interest which her husband had.

Mr. *Leith* for the respondent contended that the purchase purporting only to be of the widow's interest, it must be looked at strictly; for if the advertisment of sale had shown that more than this was being sold, a much larger sum might have been obtained, probably sufficient to satisfy both claims. There was no reason why the wording should be such as apparently to include only that share. The appellant's title-deed did not show more than a puchase of the widow's interest; and, as the property was in the son, that son's interest could not pass.

Their LORDSHIPS delivered the following judgment:—

These proceedings certainly illustrate what was said by Mr. Doyne, and what has been often stated before, that the difficulties of a litigant in India begin when he has obtained a decree. When, however, the actual question which is at issue between the appellant and the respondent on thir appeal is eliminated from the rest of the record, it does not appear to their Lordships to present any very great difficulty.

The appellant and the respondent had each, it must be assumed, a good claim against the estate of the deceased, Gourpershaud. The respondent had obtained a decree according to the practice then existing in the Civil Court in the lifetime of Gourpersha ud. The appellant, pursuing his remedy for rent under Act X of 1859 in the Collector's Court, had obtained a decree for the arrears of rent in respect of which he sued the widow as the widow of the deceased and the guardian of her infant son. It was a suit brought against those who were supposed to be the representatives of the debtor, Gourpershaud. In that suit the case set up by the defendants was that the infant was not the heir of his father; that he had been adopted into another family, and that consequently the widow

(1) Marsh, Rep., 614

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was the sole heiress and representative. The decree was against the widow in that capacity. It declared that the son was not liable, and ended with a declaration which clearly pointed to the realization of the demand out of the estates of the deceased, Gourpershaud, and showed that the decree was made against the person supposed to be the heir and representative of Gourpershaud. Other difficulties being interposed in the way of executing that decree, the appellant thought it necessary to go to the Zillah Court in order to get rid of certain deeds, as well as of the alleged *kritima* adoption of Hurpershaud, the son, and he succeeded in obtaining a decree, which was afterwards affirmed by the High Court, the result of which may be taken to affirm that Hurpershaud was the heir of his natural father. The execution of the Collector's decree had in the meantime been suspended. When the decree of the Civil Court became final, an intimation was sent to the Collector that the stop order which had been put upon the execution should be removed, and that the execution might go on. Execution of that decree was accordingly had under the conjoint provisions of Act X and Act XI of 1859, and perhaps it is owing to the operation of those statutes, and in particular to the fact that the execution took place under Act XI of 1859 by putting up the property for sale in the same way that an estate would be sold for arrears of revenue, and did not proceed under the ordinary Civil Code Act VIII of 1859, that some of the confusion and difficulties which have taken place in this case have arisen. However that may be, the estates in question were sold under the Collector's order, and purchased by the judgment-creditor. That took place in November 1867. In the meantime certain proceedings had taken place in the suit of the respondent. The respondent had originally applied for execution of his decree obtained in the lifetime of Gourpershaud against the widow and the infant son. He was met by the same allegation that had been made in the appellant's suit that Hurpershaud had no interest in his fathers's estate, and a miscellaneous order was made, which held that Hurpershaud was not liable for his father's debt, and treated the widow as the sole representative. Afterwards the respondent attempted to get the benefit of the decree which had been

obtained by the appellant, and to proceed against Hurpershad, and on that occasion the appellant intervened as an objector. The Judge disallowed the objection, but, at the same time, held that the former execution proceedings were invalid, and directed them to be struck off the file. The respondent then commenced other proceedings against Hurpershaud, and although there was no formal discharge of the miscellaneous order, the Judge appears to have considered that as swept away with the former execution proceedings, and no longer operative, and directed a sale in execution, which, if there were nothing else in the way of it, would probably have been regular against Hurpershaud as the heir of his father. However, when the respondent was proceeding to carry out that order, the appellant came in and objected that the estates had already been sold under his decree, and had been purchased by him, and that in fact they could not be any longer sold as the estates of Hurpershaud. That objection prevailed, and the result was that the respondents's only remedy was to bring the regular suit out of which this appeal has arisen.

From the above statement it is clear that, unless there be some fatal irregularity in the mode in which the decree of the appellant was obtained or drawn, or some fatal irregularity in the mode in which that decree has been prosecuted, the estates have been regularly sold, and that the suit of the respondent, seeking to set aside the order for sale, and to get the benefit of his own execution as against Hurpershaud as the heir of his father, must fail.

Their Lordships are of opinion that no case has been made upon which they can say that there has been that irregularity in the proceedings before the Collector and the sale which took place, which would justify them in setting aside the sale, and upon that point they must differ from the Judges of the High Court. The proceedings took place under Act XI of 1859, and that Act appears to contemplate that the estate should be put up for sale, and that the person whose interest should be nominally sold should be the registered proprietor. In this case, so far as the proceedings show, it appears that the widow was the registered proprietor. But the case does not rest there,

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because in the certificate of sale there is a distinct reference to the decree obtained by the appellant from the Zilla Court and therefore the whole proceeding, if fairly looked at amounts to this,—that the estate of Gourpershaud was sold under that decree in execution for his debt, and that the interest of his widow, the registered proprietor and ostensible owner of the estate, and also the interest of his son, if he had any interest, was bound by that decree. If that be so, the question arises whether the respondent, the plaintiff in the suit below, has any ground upon which he can come in and impeach the sale? It appears to their Lordships that he can claim only what interest remained in Hurpershaud, and that substantially the proceedings would be a bar to any claim on the part of Hurpershaud. It is unnecessary to consider whether, in any question between the respondent and Hurpershaud, who in this suit came in and continued to dispute his heirship, the decree in this suit which had been obtained by the appellant would be any binding adjudication between the respondent and Hurpershaud. It appears to their Lordships clearly to be a mere decree *inter partes*, and that there is no ground for giving it the effect of a decree *in rem*, which is the effect which one passage in the judgment of the High Court appears to attribute to it. But without going into that, it seems sufficient to their Lordships for the determination of this appeal to say that there was in their judgment no substantial irregularity in the sale before the Collector, and that therefore, that, as between the appellant and respondent, the appellant is entitled to, and cannot be deprived of, the benefit which has resulted to him from his greater diligence in enforcing his demand.

Their Lordships also desire to add that they are unable to see any substantial distinction between this case and that of *Issan Chunder Mitter* v. *Buksh Ali Soudagur* (1). They entirely agree in the principles expressed by Chief Justice Peacock in that case, and think that they govern the present case.

The result therefore must be that their Lordships will humbly recommend to Her Majesty that this appeal be allowed, the

(1) Marsh. Rep., 614.

judgment of the High Court reversed, and the judgment of the lower Court affirmed. The costs of the appeal will, of course, follow the result, and the appellant will be entitled to the costs of the appeal in the Court below.

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Appeal allowed.

Agents for appellant: Messrs. *Watkins* and *Lattey*.

Agents for respondent: Messrs. *J. H.* and *H. R. Henderson*.

WILLIAM HAY, COMMONLY CALLED LORD WILLIAM HAY (CO-RESPONDENT) *v.* WILLIAM GORDON (PETITIONER).

P. C.*
1872
July 30, 31,

[On appeal from the Chief Court of the Punjab.]

Act IV of 1869, *s.* 17 (1)—*Act XIV of* 1859, *s.* 1, *cl.* 16—*Concurrent Judgments on Facts—Confirmation by High Court of Decree of District Judge.*

Act IV of 1869, s. 1, cl. 16, does not apply to divorce suits.

A decree of a High Court confirming the decree by a District Judge for dissolution of marriage reversed, so far as it affected the co-respondent and condemned him in costs. The circumstances of the case took it out of the general rule not to reverse the concurrent findings of two Courts on a question of fact.

IN this suit, which was brought under Act IV of 1869 in the Judge's Court at Umballah, on the 25th June 1869, the petitioner prayed for a dissolution of his marriage with his wife Louisa Elizabeth, and to condemn the appellant in costs.

The grounds stated in the plaint were adultery with a Mr. Watson (since deceased) in 1853, and adultery with the

(1) *Act XIV of* 1859, *s.* 17.—"Every decree for a dissolution of marriage made by a District Judge shall be subject to confirmation by the High Court. Cases for confirmation of a decree for dissolution of marriage shall be heard (when the number of the Judges of the High Court is three or upwards) by a Court composed of three such Judges, and in case of difference, the opinion of the majority shall prevail, or (where the number of the Judges of the High Court is two) by a Court composed of such two Judges, and in case of difference, the opinion of the senior Judge shall prevail The High Court if it think further enquiry or additional evidence to be necessary, may direct such enquiry to be made, or such evidence to be taken."

* *Present*:—THE RIGHT HON'BLE SIR JAMES W. COLVILE, SIR B. PEACOCK SIR M. E. SMITH, SIR R. P. COLLIER, AND SIR L. PEEL.