

1968

GANGA NARA
YAN CHOW-
DEBY
v.
MOHAMMED
SIRKAR.

THE judgment of the Court was delivered by
NORMAN, J.—In this case the appellant, in September 1865, had a decree for rupees 15,798. He had previously executed his decree, and sold a portion of the judgment-debtor's property. The execution case had been struck off on the 27th of July. On the 9th of September, in the same year, he presented a petition, alleging that it was necessary to execute his decree again, praying that the amount might be realized by attachment and sale of the debtor's property. The order on that petition was, that the petitioner should give in a list of the debtor's property. He never gave a list; but, on the 21st of September, put in a petition alleging that he had received rupees 58 from one person, and rupees 100 from another person, debtors of his judgment-debtor. On the 31st of October, the case was struck off the file.

The application for execution in the present case was on the 21st of August 1868. The Judge says that, in the petition of 9th September, it cannot be considered that he was acting in the execution of the decree, "as he did not get the money though any proceeding of the Court," and that no proceedings had been taken to execute the decree before the present application for execution; and that, accordingly, under section 20 of Act XIV. of 1859, no process of execution could now issue to enforce the decree.

It is contended, on the part of the decree-holder, appellant, that he had previously sold all the judgment-debtor's property, that he could not then find any other property of the judgment-debtor, and that in getting payment of these two sums from debtors of the judgment-debtor, he did everything then in his power to recover the amount of the decree.

We cannot say, as a matter of law, that the petition of the 9th of September may not have been a proceeding to enforce the decree. But we entertain considerable doubt whether the proceeding was really an attempt to enforce the decree, considering the very small amount, *et.*, about one per cent. of the amount due which was realized, and that no list of property was given in or other steps taken to execute the decree. The Judge will take up the case and enquire whether the petition of 9th of September was *bona fide* presented by the decree-holder, with intent to proceed under it to enforce the judgment, and whether the money was really paid as alleged. With these observations the case will be remanded to the Judge.

Before Mr. Justice Norman and Mr. Justice E. Jackson.

PUTONA KOLITA AND ANOTHER (DEFENDANTS) v. MUTIA KOLITA
(PLAINTIFF)*

Registration—Deeds of Gifts—Act XX. of 1866, ss. 17, 18.

All instruments of gift of immoveable property must be registered whatever be the value of the property.

Baboo Mati Lal Mookerjee for appellant

The respondent was not represented.

* Special Appeal, No. 1791 of 1868, from a decree of the Deputy Commissioner of Kamroop, dated the 2nd of April 1868, reversing a decree of the Moonsiff of that district, dated the 16th of December 1867.

1869
April 9.

NOEMAN, J.—It is clear to us, that the decision of this case must be reversed. The plaintiff sues to establish his title, under a deed of gift, of certain land obtained from the defendant. The lower Appellate Court holds, that the registration of the deed of gift is optional. This appears to be a mistake. The 17th section of Act XX. of 1866 enacts that the whole of the instruments enumerated shall be registered, provided the property to which they relate shall be situate in the district to which the Act came into operation.

Among the instruments enumerated are instruments of gift of immovable property. It is a little remarkable that in enumerating the documents, of which registration is optional, in section 18, after the word instrument in clause 1 the words "other than an instrument of gift," which are found in clause 2 of the 17th section, are not repeated, as they should have been, and as the sense seems to require. The words "instruments of gift of immovable property" in clause 17 are not qualified in any way. They include all such instruments without any exception. We think that taking the two sections together, the meaning is that all instruments of gift of immovable property must be registered, whatever be the value of the property.

The decision of the lower Appellate Court is reversed with costs in this Court and in both the lower Courts.

Before Mr. Justice Bayley and Mr. Justice Hobhouse.

AZIZUNISSA KHATUN AND ANOTHER (JUDGMENT-DEBTORS) v. SHASHI
BHUSHAN BOSE AND OTHERS (DECREE HOLDERS).*

Joint-Decree—Act VIII. of 1859, s. 207.

1867
April 13.

Three persons obtained a joint decree. Two of them took out execution, and realized each his own share. The third applied for execution within three years from the time of the last proceedings taken by the other two; but after a lapse of three years from the last proceedings taken jointly by all three.

Held, that under section 207, Act VIII. of 1859, there was no severance of the decree, and therefore, the proceedings taken by the two kept alive the decree.

Baboo *Nalit Chandra Sen* for appellant.

Baboo *Bhawani Charan Dutt* and *Mohini Mohan Roy* for respondents.

BAYLEY, J.—I think these appeals must be dismissed with costs. It is necessary to premise by giving a few facts and dates. In the year 1846, a decree was passed in favor of the father of Lakhikant, Bepin Behari, and Nabin; Execution proceedings were taken out on the 27th April 1847. On the 13th June 1859, application was made by the above-mentioned three parties together for execution of the decree, and after this the case was struck off on the same

* Miscellaneous Special Appeals, Nos. 40, 41, 42, and 43 of 1839, from the decrees of the Judge of Dacca, dated 2nd December 1868, affirming the decrees of the Subordinate Judge of that district, dated 24th July and 25th June 1863, respectively.