

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

UDAYA CHANDRA RANA, (ONE OF THE DEFENDANTS) v. BHAJAHARI JANA
(PLAINTIFF.)*

1869
April 9.

Mortgage—Tacking.

The English law of tacking is not recognized in the Courts of this country.

Baboos *Ashutosh Dhur* for appellant.

Baboos *Hem Chandra Banerjee* and *Srinath Doss* for respondent.

JACKSON, J.—The special appellant asks us to apply the principle of the English law of mortgage, which enables a mortgagee to tack on to the amount of his mortgage, any further liability of the mortgagor to him, a principle which he does not show us has been ever recognized or adopted in the decisions of the Courts of this country. The appeal must be dismissed with costs.

MARKBY, J.—I am of the same opinion.

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

GANGA NARAYAN CHOWDHRY (PETITIONER) v. PHUL MOHAMMED
SIRKAR AND OTHERS (OPPOSITE PARTY)†

1868
April 9.

Execution—Limitation—Payments out of Court.

A decree-holder having sold a portion of his debtor's property, his case in execution was struck off the file on 27th July 1865. On 9th September, he again applied for execution, and was told to file a list of his debtor's property. This he did not do; but on 21st September, he filed a petition, alleging that he had received two small sums from persons owing money to his judgment-debtor. On 31st October, the case was struck off the file.

On the 21st August 1868, he again applied for execution. The lower Court holding that the realizations made in September 1865, were not made through the Court, and therefore, not in execution declared further execution barred by limitation. *Held*, on appeal, by the High Court, that it was material to enquire whether the petition of 9th September 1865, was *bona fide* presented with intention to proceed under it, and whether the moneys were really paid as alleged.

Baboo *Khetranath Boss* for petitioner.

Baboos *Debendra Narayan Bosa* and *Anand Gopal Palit* for opposite party.

* Special Appeal, No. 2785 of 1868, from a decree of the Subordinate Judge of Midnapore, dated the 30th June 1868, reversing a decree of the Moonsiff of that district, dated the 10th March 1868.

† Miscellaneous Regular Appeal, No. 51 of 1869, from an order passed by the subordinate Judge of Dinapore, dated the 8th December 1868.

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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 immovable 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.