

The two lower Courts, in this case, have given a decision in favor of the plaintiff, and the only ground on which we are asked to set that decision aside, is that the Civil Court has no jurisdiction to try the case.

The defendant objected to the jurisdiction in the first Court, but took no objection to the jurisdiction in the lower Court of appeal.

Without determining the question whether the Civil Court or the Revenue Court is the proper tribunal in this case, I think, that, under such circumstances, we ought not to set aside a decision which we must presume to be correct on the merits. I think that for the purpose of this appeal we ought to consider the objection to the jurisdiction as waived. Whether or no the defendant can take this objection in any other form, it is not necessary to say.

I think the appeal ought to be dismissed with costs.

JACKSON, J.—I concur in this judgment.

1869

MOHAMMED
HOSSEIN
v.
RAJA AKHAY
NARAYAN PA

Before Mr. Justice Bayley and Mr. Justice Hobhouse.

MAHIMA CHANDRA ROY (ONE OF THE JUDGMENT-DEBTORS) v. PYARI
MOHAN CHOWDHRY AND ANOTHER (DECREE-HOLDERS.)*

1869
Mark, 9.

Joint decree—Execution.

Where two joint decree-holders, each interested in an eight-anna share in money decree, issued joint execution, and one of them after the death of the other, received the whole amount due under the decree, *held*, that this was only satisfaction as respects half of the decree, and that the representatives of the deceased were entitled to issue execution for the remaining half.

Baboo *Gupinath Mookerjee* for appellant.

Baboo *Nalit Chandra* for respondents.

The judgment of the Court was delivered by

HOBHOUSE, J.—One Shama Sundari sued the judgment-debtor, who is the special appellant before us, for a certain sum of money, and got a decree in her own name on the 6th September 1862. The judgment-debtor appealed to the Judge; and during the hearing of that appeal, one Ramkishor Chowdhry was made a co-respondent with Shama Sundari to the extent of an eight-anna share in the money decree.

* Miscellaneous Special Appeal, No. 21 of 1869, from a decree of the Judge of Dacca, dated the 27th October 1868, reversing a decree of the Subordinate Judge of that district, dated the 24th June 1868.

1869

MANIMA
 CHANDRA ROY
 v.
 PYARI MOHAN
 CHOWDHRY.

On the 28th May 1864, the Judge, after having made Ramkishor a co-respondent, and thereby a co-plaintiff in the case, dismissed the appeal, naming Ramkishor as one of the judgment-creditors in the decree. Thereupon Ramkishor and Shama Sundari took out a joint execution of this decree; out at a certain time Ramkishor died, and the property of the judgment-debtor was attached by Shama Sundari alone; and this property was about to be sold, when Shama Sundari, on the 6th Chaitra 1274, put in a petition to the effect that she had received the whole amount of the money due on the decree, and the execution proceedings were thereupon stayed.

On the 25th Aghran 1275, Pyari Mohan Chowdhry, as representative of Ramkishor Chowdhry, sued out execution of the decree to the extent of Ramkishor's eight-anna share in it.

The first Court considered that the decree had been satisfied by the payment made to Shama Sundari, and refused to allow Pyari Mohan to take out execution proceedings; but the lower Appellate Court has held that payment to Shama Sundari was not a payment to Pyari Mohan, and has directed that Pyari Mohan be allowed to proceed in the execution of his decree.

The first objection taken in special appeal is that the Judge below was wrong in allowing the execution of Pyari Mohan to proceed, when no order had been passed by the Appellate Court giving to Ramkishor any share in the decretal amount.

This contention, however, is based on an error of fact; for it has been shewn to us that Ramkishor was made a co-respondent, and thereby a co-plaintiff in the Appellate Court, and was entered in the decree of that Court as one of the judgment-creditors.

The two next objections go to the merits; and in them it is urged that, when the judgment-debtor had paid one of the judgment-creditors, *vis.*, Shama Sundari, there was a sufficient legal satisfaction of the debt, being a payment to a person who was the so-called principal decree-holder. The decree was in the names of Shama Sundari and Ramkishor jointly, and the payment should have been made to them, either jointly or to each of them to the extent of their admitted shares. Now, here it appears, that there was an admitted share; Ramkishor being admittedly entitled to an eight-anna share of the money decree, and Shama Sundari to the other eight annas. If, therefore, it is a fact that the judgment-debtor paid the whole sixteen annas of the decree to Shama Sundari alone, that will not be a sufficient release for the eight annas admittedly due to Ramkishor, and, therefore, to his heir Pyari Mohan.

We think, then, that the judgment of the lower Appellate Court was good in law, and we dismiss this special appeal with costs.