1869

RANI SHAMASUNDARI DEBI v. DUKHU MANDAL.

tort was subsequently ratified by the principal. Can it then, in the absence of direct evidence, be presumed that the act complained of by the plaintiffs in this case was committed under the authority of the Rani, or that she subsequently ratified the act? This much may be assumed, in the present case, that the act complained of was done for the Rani's benefit, and it is not probable that the parties actually engaged in committing the trespass, who were her servants, acted without authority from her or from her Dewan, for they had no personal object to gain from plundering the crops; while from the previous litigation and her determination to get possession of the lands, though entitled only to a share, and to get rid of the ryots who held from Jardine, Skinner and Co., it was highly probable that she would commit the offence. Looking, therefore, to all the circumstances of the case, it appears to me that a strong presumption arises that the trespass was committed with the knowledge of the Rani; that she has failed to rebut this presumption; and that the conclusion come to by the lower Courts, on the facts and evidence before them, is correct. I, therefore, concur with my colleague in rejecting these special appeals with costs.

Before Mr. E. Justice Jackson and Mr. Justice. Hobhouse.

LALA TILAKDHARI LAL (PLAINTIFF) *v.* JAMES FURLONG AND ANOTHER (DEFENDANTS).*

1869
Feby. 11.

Priority of Lien.—Indefiniteness of Mortgage.

The plaintiff had lent money to a Court amin, who mortgaged as security for the repayment of the amount, certain fees due to him then in deposit, and certain fees which might thereafter be deposited on his account. Those fees were subsequently attached by the defendant who had obtained a decree for rent against the amin. After that the Plaintiff obtained a simple money-decree against the amin, and applied, in execution of his decree, to have the fees paid out to him, but his application was refused on the ground of the defendant's attachment.

See also 14 B. L. R. 417.

In a suit to recover the sums in deposit, and to have it declared that the plaintiff's lien on them was prior to that of the defendant, *held* that the plaintiff's mortgage

* Special Appeal No. 772 of 1868, from a decree of the Judge of Purneah, dated the 3rd of December 1867, affirming a decree of the Principal Sudder Ameen of that district, dated the 15th of September 1866.

gave him priority, and that he was not barred from bringing the present suit by his having already sued to recover the amount, and obtained a mere money-decree.

1869

LALA TILAK-DHARI LAL v. JAMES FUR-LONG.

Mr. R. E. *Twidale* for appellant.

Baboos *Jagadanand Mookerjee* and *Anukul Chandra Mookerjee* for respondents.

THE material facts of this case are as follows:—

On the 25th October 1853, the plaintiff, special appellant, obtained a bond from one Korban Ali, an amin, under which the said Korban Ali, admitted that he had received a sum of rupees 2,500 from the plaintiff, and agreed to repay it, with interest within a certain time, and further pledged certain fee in deposit, or that might thereafter be deposited in the Collectorate to his (Korban Ali's) credit as an officer of the said Collectorate, as security for the repayment of the sum borrowed.

In the year 1859, the plaintiff sued Korban Ali to recover the rupees 2,500 lent with interest; and on the 9th November 1862, he got a simple money-decree for rupees 4,400 odd, without any declaration of his right to proceed against the particular property pledged as security for the loan.

Meantime, on the 25th August 1862, the Court of Wards, the special respondent, obtained a decree for rent against the same Korban Ali; and on the 26th August 1862, attached the fees in deposit in the Collectorate to the credit of the said Korban Ali. This attachment was made under the provisions of section 16, Act VI, of 1862, B. C., corresponding with section 81, Act VIII. of 1859.

On the 16th March 1863, the plaintiff, in execution of his decree of the 9th November 1862, applied to have the said fees out of deposit from the Collectorate, but the Collector rejected the application, on the ground of the previous attachment made by the Court of Wards.

The plaintiff then sued Korban Ali and the Court of Wards to recover rupees 2,229, the amount of fees then in deposit in the Collectorate to the credit of Korban Ali. The Principal Sudder Ameen of Purneah, on 14th September 1866, dismissed

1869

LALA TILAK-DHARI LAL v. JAMES FURLONG.

the suit on the grounds that the pledge by Korban Ali of certain indefiinite future fees, along with fees in deposit, was too general to be binding as a mortgage: and that plaintiff, by suing only for a money decree against his debtor, must be held to have waived his right to proceed against any particular property of his debtor: and that the attachment on behalf of Court of Wards was valid and must prevail.

The Judge on appeal upheld this decision, quoting Macpherson on Mortgages, pages 41 and 42.

Plaintiff appealed specially, and the following were the judgments of the High Court:—

E. JACKSON, J.—The plaintiff in this suit sought to recover a certain sum of money due to him from defendant Syud Korban Ali, who, it appears, was a batwara amin, employed on the part of Government, and to have it declared that certain fees, which were in deposit in the Collectorate, were mortgaged to him by the said amin; and that under that mortgage, he (the plaintiff) held a prior lien upon those fees, to the Court of Wards, defendant No. 2, who appears to have also, in execution of a decree, attached those fees in order to recover certain money to which the defendant No. 2 was entitled.

It appears that the plaintiff brought a previous suit against the defendant No. 1, and obtained a decree in that suit. His present suit is specially for a declaration of his lien upon those fees, and of his right to obtain them in preference to defendant No. 2.

Both the Courts below have dismissed the plaintiff's suit. The Judge has dismissed it, firstly, because the attachment of the defendant No. 2 had been carried out before the plaintiff had obtained any decree declaring his lien: and, secondly, because the mortgage was indefinite in its terms, and could not be sustanied. It is on these two points that the special appeal has been pressed before us.

I am of opinion that the Judge below is wrong on both the points. The attachment on the part of defendant No. 2 was merely with a view to prevent the amin from taking the money

out of Court. It is not material whether the attachment was before or after the judgment. The question still remains, *viz.*, after the attachment to whom is the money to be given, and that is the point to determine which this suit is brought, and the determination of that point rests wholly on the question as to whether the plaintiff had obtained a prior lien upon the money.

On the second point, *viz.*, as to the character of the mortgage, I also think that there is nothing indefinite in the terms of the mortgage. The plaintiff gave a certain sum of money in loan to the amin, and the amin mortgaged to him certain fees in deposit, and certain fees which he would receive, to cover the amount of the loan with interest. I am of opinion, therefore, that the Judge was wrong on both these grounds, and that his decision should be reversed, and a decree given to the plaintiff.

There was a further argument raised during the hearing of the case by the vakeel for the respondent to the effect that the plaintiff could not now sue upon his lien, because he had already brought one suit upon his cause of action upon the bond, and was therefore, unable, with reference to the provision of section 7, Act VIII. of 1859, to bring a further suit on the same cause of action. It is sufficient to say that in my opinion the causes of action in the two suits are not identical; for although the ameen, defendant No. 1, is a party to this suit, he is a mere nominal party, and the suit is really directed against defendant No. 2.

There have been several cases before several Divison Benches of this Court in which opinions have been delivered by different Judges of the Court to the effect that a person, who sues upon a bond containing a lien only to obtain a money decree in the first instance, can afterwards bring a suit to enforce his lien. I concur in those opinions; and following them, the contention of the respondents' vakeel in this case must in my opinion fail.

HOBHOSE, J., (After stating the facts).—The prayer in the plaint was no doubt a confused one, but the real contention between the parties was that mentioned by Mr. Justice E. Jackson, *viz.* whether the plaintiff could recover the sum in question by the establishment of his previous lien under the bond of the 25th

1869

KALA TILAK-DHARI LAL v. JAMES FURLONG.

October 1853, or whether he was prevented from so recovering by reason of the previous attachment of the Court of Wards and by reason of the indefinite nature of the mortgage bond. The Courts below have dismissed the plaintiff's suit, holding, that the previous attachment of the Court of Wards must prevail, and that the mortgage bond is so indefinite, that no previous lien thereunder can be establshed in favor of the plaintiff.

I observe, on the question of previous attachment, that, in the words of the section, the attachment is only to prevail "until further orders of the Court." It is clearly, therefore, in my judgment not a final attachment barring all remedy against it, but it is an attachment which may be removed by recourse had to any legal measures; and as regards the mortgage bond, I cannot say that it is to my mind at all indefinite. It specifies distinctly certain fees deposited, or to be deposited, in a certain place to the credit of a certain person for certain services performed, and it is not denied that, at the time of the institution of this suit, there was to the credit of that certain person, for that certain purpose, and in that particular place, a sum aggregating rupees 2,229 or thereabouts.

It cannot, therefore, in my judgment be said that there is any indistinctness as to the property pledged in the bond, and the only further question that remains is that raised in cross-appeal on the part of the special respondents to the effect that the suit was barred by application of the provisions of section 7, Act VIII. of 1859. Those provisions are:—"Every suit shall "include the whole of the claim arising out of the cause of ac-"tion, but a plaintiff may relinquish any portion of his claim, "in order to bring the suit within the jurisdiction of any Court. "If a plaintiff relinquish or omit to sue, for any portion of his "claim, a suit for the portion so relinquished or omitted, shall "not afterwards be entertained."

Now the question between the present plaintiff and the Court of Wards, respondent, did not arise out of the same cause of action as that which existed between the plaintiff and Korban Ali. The cause of action to the plaintiff in this case was the obstruction offered by the Court of Wards, defendant, to plaintiff's

1869

LALA TILAK-DHARI LAL v. JAMES FURLONG.

receiving a certain sum of money, which he alleged was his property by reason that it had been pledged to him as security for the money he advanced to Korban Ali. This cause of action arose to the plaintiff, not when he sued Korban Ali for the debt, but when, on the 26th August 1862, the Court of Wards, defendant, refused to allow him the money which had been pledged to him.

I am of opinion, therefore, that the plaintiff's suit will lie, and I find that we are supported in this view by opinions expressed by various Judges of this Court in the cases of *Gupinath Sing* v. *Shiu Sahaya Sing* (1), *Shaikh Mowla Buksh* v. *Bhyrab Doss* (2), *Bindabun Chunder Shaha* v. *Janee Bibee* (3).

I agree, threfore, that the decisions of the Courts below must be reversed, and we must declare that the plaintiff is entitled to recover, out of the deposit in the Collectorate, the fees placed to the credit of Korban Ali, the Court of Wards, defendant's previous attachment of the 26th August 1862 notwithstanding, and we think that the plaintiff must have his costs in all Courts.

1869
Feby. 13.

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

RAMDHAN MANDAL (DECREE-HOLDER) *v.* RAMESWAR BHATTACHARJEE (JUDGMENT-DEBTOR.)*

Limitation—Summary Decision—Act XIV. of 1859, s. 22.

The words "summary decision," as used in section 22, Act XIV. of 1859, mean a decision of the Civil Courts not being a decree made in a regular suit or appeal.

Under section 22, Act XIV. of 1859, the period for the enforcement of such decision is one year from the time it was passed.

Baboo *Nabakrishna Mookerjee* for appellant.

Baboos *Annada Prasad Banerjee* and *Hem Chandra Banerjee* for respondent.

* Miscellaneous Special Appeal No. 503 of 1868, from an order of the Judge of Hooghly, dated the 7th of September 1868, reversing the order of the Sudder Ameen of that district, dated the 3rd June 1868.

(1) Case No. 2809 of 1863 ; 14th December 1864.

(2) 5 W. R., 115.

(3) 6 W. R., 312.