

APPELLATE CIVIL.

Before Mr. Justice Norris and Mr. Justice Macpherson.

**KISHORE CHAND BHAKAT AND OTHERS (JUDGMENT-DEBTORS) v.
GISBORNE & CO. (DECREE-PURCHASERS) AND OTHERS (DECREE-
HOLDERS).***

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Civil Procedure Code, 1882, s. 232—Transfer of portion of decree—Execution of decree by transferee of portion of decree.

No legislative prohibition exists to the transfer of a portion of a decree ; and provided that the whole decree is executed, and the rights of all parties interested are cared for, there is no objection to the transferee being allowed to carry on the execution-proceedings.

Sectaput Roy v. Ali Hossein (1) dissented from.

THE facts of this case were as follows :—On the 21st August 1885, Koylash Dobe and others obtained a decree against the present judgment-debtors, appellants. On the 6th of October 1885, the Dobeys assigned to the Gisbornes a twelve-anna share of the costs to which they were entitled by virtue of their decree. On the 15th September 1887, an application was made by the Gisbornes for execution of the whole decree. The Dobeys, who still retained a right to a four-anna share of the costs given by the decree of the 21st August 1885, were parties to that application. Notice of the application was duly served in conformity with the provisions of s. 232 of the Civil Procedure Code, and on the 11th November an order was made for placing the Gisbornes upon the record in the room of the Dobeys, the original judgment-creditors ; and an order was also made on the same day for attachment of certain properties of the judgment-debtors, appellants. On the 3rd December a fresh order for attachment was made, the first order having become inoperative by reason of the non-payment of certain fees ; and the 27th of December was fixed for settlement of the sale proclamation. On the 27th of December (apparently in the presence of all parties) the sale proclamation was settled and directed to be issued ; and the 20th February 1888 was the date fixed for the sale of the attached properties. On the 18th February the judgment-debtors put in certain objections. Some

* Appeal from Order No. 251 of 1889, against the order of G. W. Place, Esq., Judge of Bankura, dated the 12th of July 1889, reversing the order of Baboo Taraprosunno Ghose, Munsiff of Khatra, dated the 13th of July 1888.

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of these objections were directed against the substitution of the Gisbornes upon the record as transferees of the decree; and other objections were against the execution of the decree by the Gisbornes. The 23rd February was fixed for the hearing of these objections; they were heard on the 23rd and subsequent days; and on the 13th July the Munsiff made an order disallowing the Gisbornes' application for execution of the decree upon the ground that the transfer by the original judgment-creditors to the Gisbornes was not a *bond-fide* transfer. Against that order the Gisbornes appealed to the District Judge, and the District Judge held that no appeal lay to him. The Gisbornes preferred a second appeal to the High Court, and that Court held that an appeal did lie to the District Judge, and directed him to hear the case on the merits. The District Judge accordingly heard the appeal on the merits, and found that, as a matter of fact, the transfer of the decree was a *bond-fide* transfer.

From this decision the judgment-debtors appealed. The only material ground of appeal was that the assignees having, on their own allegation, purchased only a portion of the decree, the Court below should have held that they had no right to be substituted in the place of the decree-holders, and had no right to apply for execution of the decree.

Baboo *Boiddonath Dutt* for the appellants.

Mr. *R. E. Twidale* and Baboo *Umakali Mookerjee* for the respondents.

The case of *Seetuput Roy v. Ali Hossein* (1) was referred to for the appellants.

The judgment of the Court (NORRIS and MACPHERSON, JJ.) was as follows. (After stating the facts as above, their Lordships proceeded):—

In second appeal before us two points have been urged, first, that there can be no transfer of a portion of a decree, and that the transferee of a portion of a decree is not in a position to carry on the execution-proceedings. In support of this contention we are referred to the case of *Seetuput Roy v. Ali Hossein* (1), where Mr. Justice Mitter says at page 12 of the report: "It is doubtful whether under s. 208, Act VIII of 1859," which is the section

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corresponding to s. 232 of the present Code, "they could be so added upon the record as co-decreeholders: s. 208 refers to the assignment of a whole decree, not of a portion of a decree. Therefore, as I have already observed, it is doubtful whether the Court had power to place the present special appellants as co-decreeholders on the record. But be that as it may, we think that there has been no proper application for executing the decree as far as the mesne profits are concerned." We are of opinion that there exists no legislative prohibition against the transfer of a portion of a decree, and that, if that is so, there can be no objection whatever to the transferee of a portion of a decree carrying on execution-proceedings, provided of course that the whole decree is executed, and that in the execution-proceedings, if any interest in the decree is left in the original judgment-creditors, their interests are provided for. No doubt, either upon an application for the substitution of the alleged transferee upon the record, or upon the application by such transferee to be allowed to execute the decree, the judgment-debtors have a right to be heard, and they have a right to urge the existence of any equities subsisting between themselves and the judgment-creditors; and if the Court sees that allowing the transferee of a decree to execute it would place the judgment-debtors in a disadvantageous position, or would deprive them of any equities which exist between themselves and the judgment-creditors, such Court ought not to allow the transferee to execute the decree. But always supposing that the rights of all parties are cared for, there seems to us no objection to allowing execution of the decree.

The second point urged by the learned Vakeel for the appellant is upon a question of fact. He contends that the District Judge has not disposed of the question whether the transfer was, as a matter of fact, a *bond-fide* one. We think, however, as I have already said, that the judgment of the District Judge upon this point shows that he has considered the whole evidence, and the conclusion to which he has come is that the transfer was, as a matter of fact, a *bond-fide* one. There are no materials before us upon which we can interfere with this decision upon a question of fact. Both points raised in this appeal therefore fail. The appeal must therefore be dismissed with costs.

J. V. W.

Appeal dismissed.

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