

The learned Vakeel for the respondent has not referred to any authority directly supporting the proposition that a sale under the Public Demands Recovery Act on a certificate based on a mortgage in favour of the Government has the effect of an assignment of the mortgage interest to the purchaser. The cases cited by him—*Eman Montazooddeen Mahomed v. Raj Coomar Dass* (1) and *Narsidas Jitram v. Jog'ekar* (2)—were decided in 1875 and 1879, respectively. Under the Transfer of Property Act, a mortgagee is debarred from selling the property mortgaged except by means of a suit under that Act, and we think that the rule laid down in those cases is no longer law. It seems to us that the Legislature practically adopted the view taken by the High Court of Allahabad in *Khub Chand v. Kalian Das* (3), in which the law as laid down in the Calcutta and Bombay High Courts was dissented from. The Legislature went further and prohibited sales of mortgaged properties under decrees for money at the instance of mortgagees.

The decree made by the lower Appellate Court should, therefore, be set aside and that of the Subordinate Judge restored with costs.

M. N. B.

Appeal allowed.

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NARAIN
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v.
NAND
KISHORE
LAL DAS.

Before Mr. Justice Ameer Ali.

MONMOHINEY DASSEE

v.

RADHA KRISTO DASS.*

Attachment—Claim—Property attached in possession of and standing in the name of some person other than the judgment-debtor—Civil Procedure Code (Act XIV of 1882) ss. 278, 280.

In an investigation under s. 280 of the Civil Procedure Code the Court has to determine the question of possession merely, and cannot go into the question of title with respect to the property taken in attachment. If the possession of the person holding the property be on his own account, the fact that the judgment-debtor may have a beneficial interest or some title in it cannot be gone into.

* Original Civil Suit No. 893 of 1900.

(1) (1875) 14 B. L. R. 408.

(2) (1879) I. L. R. 4 Bom. 57.

(3) (1876) I. L. R. 1 All. 240.

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Hamid Bakht Mozumdar v. Buktear Chand Mahto (1) and *Sheoraj Nandan Singh v. Gopal Suran Singh* (2) followed.

In a summary investigation under the above section the Court cannot hold merely on suspicion that the claim is untenable.

Sreeman Chunder Dey v. Gopaul Chunder Chuckerbutty (3) and *Moonshee Buzloor Ruheem v. Shumsoonissa Begum* (4) referred to.

THE plaintiff Monmohiney Dassee obtained a decree against the defendant Radha Kristo Dass, and in execution of that decree attached three pieces of Government securities. Panna Lall Dassee thereupon put in a claim under s. 278 of the Civil Procedure Code, alleging that the securities belonged to her and not to the defendant judgment-debtor. The securities stood in the name of the claimant, and it was proved that she sent one of them to the bank for realizing interest due thereon and entrusted two others to her attorney for sale for the purpose of paying with the proceeds thereof the price of a house which she had negotiated to purchase. Evidence was also adduced to prove that they were purchased with monies belonging to the claimant. On behalf of the decree-holder, it was not shown that, although the securities stood in the name of the claimant, they had in reality been dealt with and enjoyed by the judgment-debtor.

Mr. Sinha and *Mr. B. C. Mitter* on behalf of the plaintiff decree-holder.

Mr. Dunne and *Mr. Knight* on behalf of the claimant.

AMHERST ALI J. This matter comes before me under ss. 278 and 280 of the Civil Procedure Code, viz., the provisions which relate to claims to attached property on the ground that it is not the property of the judgment-debtor.

A suit was brought by Sreemutty Monmohiney Dassee against Radha Kristo Dass in December 1900 for a sum of Rs. 2,000 alleged to have been lent by her to Radha Kristo Dass.

The suit was decided substantially *ex parte*, and in execution of that decree Sreemutty Monmohiney Dassee attached three pieces of Government securities, which form the subject-matter of the claim in the present proceedings.

These Government promissory notes had been taken to the bank for certain purposes, to which I shall presently refer, and the

(1) (1887) I. L. R. 14 Calc. 617.

(2) (1891) I. L. R. 18 Calc. 290.

(3) (1866) 11 M. I. A. 28.

(4) (1867) 11 M. I. A. 551.

order for attachment was taken out and given effect to in the bank. Sreemutty Panna Lall Dassée thereupon put in a claim under s. 278 of Act XIV of 1882, alleging that the securities belonged to her and not to the judgment-debtor. Mr. Justice Sale made an order on the 10th of February setting down the claim for adjudication on affidavits, which came on before me on the 5th of April. Upon looking into the affidavits, however, I was of opinion that the matter could not be decided satisfactorily on affidavits. So evidence was gone into before me, which occupied the whole of yesterday and to-day.

The question which the Court has to determine under the claim sections of the Code has been pointed out in a number of cases, and it does not seem to me necessary to go over the same ground again. I adopt the principle enunciated in *Hamid Bakht Mozumdar v. Buktear Chand Mahto* (1); *Sheoraj Nandan Singh v. Gopal Suran Singh* (2). In the latter case it was held that in an investigation under s. 280, what the Court has to determine is merely the question of possession, and cannot go into the question of title with respect to the property taken in attachment.

The words of the section are clear upon the point.

S. 278 deals with the investigation of claims to attached property and objections to the attachment thereof.

S. 279 provides for the production of evidence on the part of the claimant or objector to show that at the date of the attachment he had some interest in or was in possession of the property attached.

S. 280 declares: "If upon the said investigation the Court is satisfied that for the reason stated in the claim or objection such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him * * *

* * * * * The Court shall pass an order for releasing the property, wholly or to such extent as it thinks fit, from attachment." Mr. Sinha on behalf of the judgment-creditor contends that as the sections require a consideration of the question whether the possession of some other person was or was not in trust for the judgment-debtor, the Court ought to see whether in this particular case the

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(1) (1887) I. L. R. 14 Calc. 617.

(2) (1891) I. L. R. 18 Calc. 290.

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Government securities in question were not standing in the *benami* name of Sreemutty Panna Lall Dassee, although really belonging to the judgment-debtor.

It seems to me, however, that the argument which has been put forward is not well founded. What I have to see is whether the property attached is in reality in the possession of the judgment-debtor or of some person in trust for him.

I have nothing to do with the question of title to the property. If the possession of the person holding it is on his own account, the fact that the judgment-debtor may have a beneficial interest or some title in it cannot be gone into in a proceeding under ss. 278 and 279 of the Civil Procedure Code. This was pointed out in the case of *Sheoraj Nandan Singh v. Gopal Suran Narain Singh* (1). I adhere to the view I expressed there.

I must therefore see in this case whether the Government securities, which form the subject of dispute in the present proceeding, are in the possession of Sreemutty Panna Lall Dassee in trust for the judgment-debtor. If they are held by her in trust for him, the claim must be disallowed. If the claimant has possession of the Government securities in her own right, although Radha Kristo or persons deriving title under him may succeed in establishing his right to the same, it is not a matter for enquiry in this proceeding and will not affect the claim.

The Government securities stand in the name of Sreemutty Panna Lall Dassee. The evidence given by the decree-holder herself shows that they were purchased on her account and for her by Radha Kristo, who was merely acting as her agent. It further appears that she sent one of those Government securities for realizing interest thereon, and entrusted two others to her attorney for sale to pay with the proceeds thereof the price of a house, which she had negotiated to purchase. There is also the evidence of Khetter Mohun Dass that, after the purchase of these Government securities, Radha Kristo told him that he had purchased them with monies belonging to Sreemutty Panna Lall Dassee. Apart therefore from the question of title, it is clear that the Government securities are held by Sreemutty Panna Lall Dassee not in trust for the judgment-debtor, but in assertion of her own right.

(1) (1901) I. L. R. 18 Calc. 290.

It has not been shown on the other side that Radha Kristo has ever realized interest on these securities or at any time attempted to deal with them: in other words, that, although they stood in the name of Sreemutty Panna Lall Dasse, they had in reality been dealt with and enjoyed by the judgment-debtor. Whether Radha Kristo had means of his own or not is to my mind not relevant to the present enquiry. The question of Sreemutty Panna Lall Dasse's means had certainly a bearing on the question whether the Government promissory notes in question were held by her in trust for her husband. The evidence of Bemolamoney shows that Sreemutty Panna Lal Dasse could not have been a woman without means. She states in her evidence that while the claimant was residing in her father-in-law's house, part of the expenses were met by the husband, part by the wife, and part by the mother. It is also evident that she was the daughter of a man who was rich at one time and received considerable jewellery at the time of her marriage. Her father states he made her presents in money and jewellery from time to time, and that it is not improbable or unnatural, considering she was the only daughter. The fact that presents were made to her is admitted by Bemola, although she denies that presents in money were ever made. Learned Counsel for the decree-holder has asked me to hold merely on suspicion in a summary investigation of this character that the claim is untenable. Even in a suit based on title, a question of this character cannot be decided on mere suspicion. On this subject the Judicial Committee in the case of *Sreeman Chunder Dey v. Gopaul Chunder Chuckerbutty* (1) at p. 43 of the report say as follows:—

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“Undoubtedly there are in the evidence circumstances which may create suspicion, and doubt may be entertained with regard to the truth of the case made by the applicant, but in matters of this description it is essential to take care that the decision of the Court rests not upon suspicion, but upon legal grounds established by legal testimony.”

In another case—*Moonshee Buzloor Ruheem v. Shamshoonissa Begum* (2)—in the same volume at p. 602, they say:—

“The habit of holding land *benami* is inveterate in India; but that does not justify the Courts in making every presumption against apparent ownership.”

(1) (1866) 11 M. I. A. 28.

(2) (1867) 11 M. I. A. 551.

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Under s. 280 what one has to see is apparent ownership, combined with the fact that the ownership is not in trust for the judgment-debtor.

It is not necessary for me to express an opinion on the evidence regarding the relative means of Radha Kristo and Panna Lal Dassee, nor as to the reality of the money-lending business which Panna Lal Dassee said she carried on.

I ought to add, however, that the story of Radha Kristo being possessed of Rs. 10,000 or that he told the decree-holder that he had so much money in his box is in my opinion untrue. On the whole, however, I am of opinion, confining myself to the subject of enquiry and the question I have to decide, that the securities which have been taken in attachment by the decree-holder in this instance were not held by the claimant in trust for the judgment-debtor, and that consequently there must be an order directing the release of the property under attachment.

Attorneys for the plaintiff decree-holder: *Fox and Mondle.*

Attorneys for the claimant: *Leslie and Hinds.*

Before Mr. Justice Hill and Mr. Justice Brett.

BEJOY SINGH DUDHURIA

v.

HUKUM CHAND.*

Decree-holder—Meaning of,—Civil Procedure Code (Act XIV of 1882), ss. 311 and 295—Execution—What class of decree-holder can come in under s. 295—Locus standi—Appeal.

“The decree-holder” in s. 311 of the Civil Procedure Code includes any decree-holder for the enforcement and satisfaction of whose decree the sale has been held, and would therefore include all decree-holders who, prior to sale, have applied to the Court under s. 295 for execution of their decrees.

Lakshmi v. Kuttunni (1) and *Chuttrapat Singh v. Jadukul Prosad Mukerjee* (2) referred to.

A obtained a decree on the Original Side of the High Court against B, and transferred it to the District Judge at Moorshedabad for execution, who

* Appeal from Original Order No. 361 of 1901 made against the order passed by J. E. Webster, Esq., District Judge of Moorshedabad, dated the 12th of July 1901.

(1) (1886) I. L. R. 10 Mad. 57.

(2) (1892) I. L. R. 20 Calc. 673.

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