

ORIGINAL CIVIL.

Before Mr. Justice Pontifex.

HEM CHUNDER CHUNDER v. PRANKRISTO CHUNDER.

1876
July 27.*Order on Receiver to sell—Attachment in Mofussil of Property in Hands of Receiver—Execution of Decree.*

By a decree of the High Court obtained by *D M* in November 1871 in a suit on a mortgage brought by him against *B C* and *P C*, it was ordered that the suit should be dismissed against *P C*; that the amount found due on the mortgage should be paid to *D M* by *B C*; that the mortgaged property, some of which was in Calcutta and some in the mofussil, should be sold in default of payment, and any deficiency should be made good by *B C*. The property in Calcutta was sold under the decree, and did not realize sufficient to satisfy the decree. *D M*, thereupon, in August 1873, obtained an order for the transfer of the decree to the Mofussil Court for execution: after the transfer *B C* died in December 1874, leaving a widow and an adopted son his representatives, against whom the suit was revived. The decree, however, was returned to the High Court unexecuted.

In a suit for partition of the estate of *R C* deceased, brought by *P C* against *B C* in the High Court, a decree was made in February 1871 for an injunction to restrain *B C* from intermeddling with the estate or the accumulations, and for the appointment of the Receiver of the Court as Receiver, to whom all parties were to give up quiet possession. *B C* was in that suit declared entitled to a moiety of the property in suit.

Held, on application by *D M* to the High Court for an order that the Receiver should sell the right, title and interest of the widow and son of *B C* in the estate in his hands to satisfy the balance of his debt, that *DM* was entitled to an order that their interest should be attached in the hands of the Receiver, and that the Receiver should proceed to sell the same.

Property in the hands of the Receiver of the High Court cannot be proceeded against by attachment in the mofussil.

THIS was an application in this suit on notice on behalf of one Denonath Mitter for an order that the Registrar or the Receiver should sell the share of Roymoney Dossee and Hem Chunder Chunder in certain specified properties in the hands of the Receiver, of which a portion was in Calcutta and a portion in the mofussil, sufficient to pay the balance due to Denonath Mitter, in respect of a decree obtained by him, dated 29th

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November 1871, in a suit brought by him against Bissonath Chunder, since deceased, and Prankristo Chunder. That suit was one on a mortgage, and the decree contained, amongst other things, an order, that the suit should be dismissed against Prankristo Chunder, for payment of the sum found due on the mortgage with costs by Bissonath Chunder to Denonath Mitter, for sale of the mortgaged property on default of payment, and for payment by Bissonath of any deficiency in the sale-proceeds to pay the debt. A sum of about Rs. 30,000 was found due to the plaintiff, and, default having been made in payment thereof, the property in Calcutta was sold by the Registrar and realized Rs. 23,000, which sum, less commission, was paid to Denonath Mitter. In August 1873, Denonath petitioned the High Court for an order that the decree should be transferred to the Court of the 24-Pergannas for execution to obtain satisfaction of the balance. After it had been transferred, Bissonath died in December 1874, leaving Hem Chunder, his adopted son, and a widow, Roymoney Dossee, his representatives, against whom the suit was revived. The decree, however, was returned to the High Court unexecuted.

By a decree dated 13th February 1871 made in a suit brought by Prankristo Chunder against Bissonath Chunder and others for partition of the estate of Ramtonoo Chunder, deceased, an injunction was granted, restraining Bissonath Chunder from intermeddling with the estate of Ramtonoo or the accumulations thereof; the Receiver of the Court was appointed Receiver of the estate, and all parties ordered to give up quiet possession to him, and he had since been in possession thereof. Bissonath was, in that suit, declared entitled to a moiety of the estate in the hands of the Receiver, and Denonath Mitter not having been able to obtain satisfaction of the balance due to him from the estate of Bissonath made the present application to realize the same by sale by the Receiver of the right, title and interest of Hem Chunder and Roymoney in the property, or in so much thereof as would be sufficient to pay his debt.

Mr. *Kennedy*, in opposing the application, contended that the procedure laid down by Act VIII of 1859 was the proper and

only course which should have been adopted in this case. Under Act VIII there must be an attachment in the usual way of the property. That the property was in the hands of the Receiver is immaterial. It might have been attached in his hands. The present application is not one for attachment. There is no other way of attaching than under Act VIII. The application, therefore, cannot be granted in the form asked for.

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Mr. *Macrae* contended that the application was in proper form, and was one which the Court could grant. The proceeding by attachment was not one which was open to the applicant in this case, as the property was in the hands of the Receiver of this Court: there are cases to show that, when such is the case, no attachment can be obtained in a Mofussil Court. Such a proceeding would be a contempt of this Court.

PONTIFEX, J.—In this case before 1871 there was a suit for partition of the estate of Ramtonoo Chunder. In that suit Bissonath Chunder was a defendant. By a decree in that suit, dated the 13th of February 1871, the Receiver of the Court was appointed Receiver of the estate, and there was the usual order, restraining the defendants in that suit and persons claiming under them from intermeddling with the estate pending partition, and it was further ordered that quiet possession should be given to the Receiver. Bissonath Chunder has since died, and his representatives have been made parties to the suit.

Under these circumstances, and while the Receiver is still undischarged, one Denonath Mitter, a judgment-creditor in a suit on a mortgage against Bissonath Chunder, now seeks satisfaction of his decree against Bissonath's share of the property under partition, and finds himself powerless to execute his decree against such share without the assistance of the Court, because the estate is in the hands of the Receiver. It is, therefore, absolutely necessary for him to come to this Court for assistance. It seems to me that unless I grant this application, Denonath Mitter will be unable to execute his decree against the property of Bissonath, so as to obtain satisfaction of his judgment-debt. He cannot proceed in the usual and ordinary way under Act VIII.

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to attach and sell the property in the mofussil, because it is in the hands of the Receiver of this Court.

I will make an order that Bissonath's interest in the property in the hands of the Receiver must be considered as attached, and that the Receiver proceed to sell that interest, and for the purpose of carrying out the sale I will order Bissonath's representatives to join in any conveyance which may be necessary; the sale proceeds to be paid into Court in this suit to await the further orders of the Court.

Application granted.

Attorney for the applicant: Baboo Shamaldhone Dutt.

Attorney for Hem Chunder and Roymoney: Mr. Remfry.

APPELLATE CIVIL.

Before Mr. Justice Kemp and Mr. Justice Pontifex.

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Feb. 22.

LALLAH RAMESSHUR DOYAL SINGH (PLAINTIFF) v. LALLAH
BISSEN DOYAL AND ANOTHER (DEFENDANTS)*.

*Damages, Suit for—Joint Undivided Proprietors—Revenue Sale—
Act XI of 1859.*

No suit for damages as between joint owners on undivided estates will lie, in consequence of the sale of the whole estate through the default of one or more of such owners in paying their shares of the Government revenue.

THIS suit was for damages, amounting to Rs. 10,478. The plaintiff alleged that he was the proprietor of a 4-anna share in a mokurruree right in certain mouzahs, appertaining to lot Mehal Hakimpore, Pergunna Chowssa, Zilla Shahabad. He alleged that the parent estate Hakimpore was sold for arrears of Government revenue, owing to the neglect of his co-sharers in the mokurruree in paying up their quota of Government revenue. He further alleged that the entire 16 annas of the mouzah, which comprised the mokurruree, were let out in perpetual mokurruree by the Rajah of Buxar to Lallah Mewa Lal, the common

* Regular Appeal, No. 258 of 1874, against a decree of the Subordinate Judge of Zilla Shahabad, dated the 26th of June 1874.