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WOMDA  
KIANUM  
v.  
RAJROOP  
KOER.

execution was taken out for sale of the land in question. The judgment-debtor objected to the sale, and applied for the appointment of a manager under s. 243 of Act VIII. of 1859. The lower Court refused the application, whereupon the judgment-debtor appealed to the High Court.

*Baboo Amarendro Nath Chatterjee* for the appellant.

*Moonshee Mahomed Yusoof* for the respondent.

The judgment of the Court was delivered by

AINSLIE, J.—S. 243 does not apply to a decree founded on a mortgage, when that decree declares that certain property is to be sold in satisfaction of the mortgage debt. The creditor's right of sale in such case rests on the mortgage decree, and not on the attachment in execution. The decree cannot be varied by proceedings in execution thereof. The appeal must be dismissed with costs.

*Appeal dismissed.*

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*Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Birch.*

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Dec. 10.

GUNOO SINGH (PLAINTIFF) v. LATAFUT HOSSAIN AND OTHERS  
(DEFENDANTS).\*

*Mortgage—Covenant not to Alienate.*

An agreement recited that *A* had executed a bond in favour of *B.*, in which it was declared, "I promise to repay the whole principal, with interest, in the month of Phalgun, 1271, F.S., and till payment of the amount I will not transfer any property by conditional sale or mortgage." The bond contained no further proviso declaring invalid future alienations of the lands belonging to *A.*, in the manner specified in the bond. *Held*, that the instrument did not operate as a mortgage by *A.*

*Rajkumar Ram Gopal Narayan Singh v. Ram Dutt Chowdry* (1) distinguished.

ON the 1st of Sawan 1270 Fasli (30th July 1863) one Doulut Singh lent and advanced certain moneys to the

\* Special Appeal, No. 2499 of 1876, against the decree of Baboo Mathura Nath Gupta, First Subordinate Judge of Zilla Bhagalpore, dated the 14th of August 1876, reversing the decree of Moulvie Mohamed Nurul Hossein Khan, Munsif of Bagoa Serai, dated the 29th of November 1875.

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defendant Chatru Singh, and in consideration of the loan Chatru Singh executed a bond for the amount, which also contained the following agreement: "I promise to repay the whole, principal with interest, in the month of Phalgun 1271, F.S. (March 1864), and till the payment of the amount I will not transfer any property by conditional sale or mortgage." On the 15th February 1866, the defendant Chatru Singh, in consideration of moneys lent, by a registered mortgage bond mortgaged to the present plaintiff certain lands therein specified the property of the said Chatru Singh. Doulut Singh brought an action on the bond, and obtained a decree on the 29th of March, and, in execution of this decree, attached, and on the 7th August 1869 sold by auction-sale, the lands comprised under the last mentioned mortgage bond. The present suit was instituted for the recovery of Rs. 663-5 principal and interest due on this mortgage bond, by sale of the land comprised therein.

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The lower Appellate Court, overruling the decision of the Court of first instance, found that the prior bond given by the defendant Chatru Singh to Doulut Singh was in the nature of a mortgage deed, and created a valid charge on the property sold under the decree of the 29th March 1866.

The plaintiff preferred a special appeal.

*Baboo Amarendro Nath Chatterjee* for the appellant.

*Mr. R. E. Twidale* and *Mooushee Mohamed Yusoof* for the respondents.

The judgment of the Court was delivered by

GARTH, C. J.—In this case we think that the Subordinate Judge has taken a wrong view of the so-called instrument of mortgage. We consider that it did not amount to a mortgage at all, but that it was merely a covenant not to alienate any property of the debtor until payment of the money advanced. The case decided by the Full Bench—*Rajkumar Ram Gopal Narayan Singh v. Ram Dutt Chowdhry* (1)—which has been

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relied upon by the respondent, is, in our opinion, an authority in favor of the view which we now take. The instrument before the Court in that case referred to a specific property by name; and there were expressions in the instrument which led the Court to think, that the parties intended that property to be pledged. But the Chief Justice in that case expressly says, that if the question there had been whether a bond for payment of money, with a simple covenant not to alienate the obligor's property until payment, constituted a mortgage, he thought that question should be answered in the negative.

Now here we have precisely that case. We have simply a covenant that the debtor, the person borrowing the money, will not part with any of his property until payment of the debt; and we have no such expressions as those which in the Full Bench case induced the Court to hold that the instrument amounted to a mortgage. Those expressions were,—“should we make all these transactions with respect to the said land” (that is, the particular lands which were mentioned in the bond) “the instrument relating thereto shall be deemed invalid, and as executed in favor of nominal parties for evading payment of the money covered by the said land.” In the absence of any such expressions here, we think that the Full Bench decision does not apply, and that this deed merely amounted to a general covenant not to part with any of the debtor's property.

The result will be, that the decision of the Subordinate Judge will be reversed, and the judgment of the Munsif restored with costs in this Court and in the Court below.

*Appeal allowed.*

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