

claim, and to act accordingly, would be entirely lost. In my opinion the right of the plaintiff to maintenance having become barred prior to the passing of Act IX of 1871, it was also extinguished, and being extinguished it was not revived by the alteration which this Statute made in the period of limitation applicable to suits of this nature.

The result is, that the judgments of the Courts below must be reversed, and the suit dismissed with costs; and the plaintiff, respondent, must also pay the costs of this appeal.

PRINSEP, J.—I have had much doubt regarding the construction of the right to sue for maintenance merely because the remedy was barred by Act XIV of 1859, for if it has not been extinguished, the bar to a suit has been revived by the present Limitation Act (IX of 1871); but having regard to the terms of the judgment of the Privy Council in *Gunga Gobind Mundul's case* (1), and the cases decided by this Court which have just been quoted, I feel that I cannot do otherwise than agree in the order which it is proposed to make (2).

Appeal allowed.

Before Mr. Justice Ainslie and Mr. Justice Kennedy.

WOMDA KHANUM (JUDGMENT-DEBTOR) v. RAJROOP KOER
(DECREE-HOLDER).*

1877
Dec. 20.

Mortgage Decree—Appointment of Manager—Execution Sale—Act VIII of 1859, s. 243.

Section 243, Act VIII of 1859, does not apply to a decree on a mortgage, when the decree declares that certain property is to be sold in satisfaction of the mortgage debt. A manager, therefore, cannot be appointed under s. 243 in such a case.

THE plaintiff in this case obtained a decree for sale of certain mortgaged property. At the conclusion of the year of grace,

* Miscellaneous Regular Appeal, Nos. 215, 216, and 217 of 1877, against the order of Baboo Matadin Roy Bahadur, Subordinate Judge of Zilla Gya, dated the 5th of June 1877.

(1) 1 J. Moore's I. A., 345; S. C., 7 *Hansraj*, I. L. R., 1 Bom., 295; and W. R., P. C., 21. *Ramchandra v. Soma*, *id.*, 305 note.

(2) See *Abdul Karim v. Munji*

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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.

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

1877
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.

(1) 5 B. L. R., 264.