

Before Mr. Justice Morris and Mr. Justice Prinsep.

1881
Jan. 19.

BABA MOHAMED (DECREE-HOLDER) *v.* WEBB (JUDGMENT-DEBTOR).*

Execution of Decree—Satisfaction, plea of, in Bar—Civil Procedure Code (Act X of 1877), ss. 244 and 258.

Where a decree-holder, declared to be entitled to possession of certain land, subsequent to decree executed a patta in favor of his judgment-debtor, who was then in possession, and afterwards took out execution under his decree,—

Held—on an objection by the judgment-debtor that, under these circumstances, he was not entitled to possession—that satisfaction of the decree not having been entered up, such objection could not be dealt with under s. 244 of the Civil Procedure Code.

Held also, that s. 258 of the Civil Procedure Code deals with the adjustment of any decree, and not merely with the adjustment of a money-decree.

In this case the appellant, Baba Mohamed, on the 18th March 1876, obtained a decree, which was affirmed on appeal on the 16th August 1876, against the respondent C. R. Webb, for possession of certain land, but had not, up to September 1879, attempted to execute it. In that month, however, he applied for execution; and on the 26th November, the respondent was dispossessed, having in the meantime failed to come in and show cause why the decree should not be executed against him, though notice had been served upon him to do so if he chose. Subsequently, he came forward and objected to being dispossessed, on the ground that, in January 1877, the appellant had agreed with him that he (the judgment-debtor) should remain in possession of the land, the subject of the decree, as tenant, and in pursuance of such arrangement the appellant had granted him a patta. He further stated, that the appellant had refused to register the patta, but that, on appeal from the order of the District Registrar, registration had been directed; but that it had never been actually carried out owing to the patta having

* Appeal from order, No. 189 of 1880, against the order of J. R. Hallett, Esq., Officiating Judge of Rungpore, dated the 25th March 1880, reversing the order of Baboo Premchand Paul, Muunsif of Julpigori, dated the 27th January 1880.

been destroyed in a fire which had occurred in the Julpigori Government offices. It further appeared, that though no satisfaction of the decree had been entered up, the judgment-debtor had remained in possession of the land. The Munsif, by an order dated the 27th January 1880, considering that the objection could not be dealt with under ss. 244 and 258 of the Civil Procedure Code, declined to entertain it; and in dismissing the petition, left the judgment-debtor to establish his right to possession by a regular suit. From this order the latter appealed, on the ground that the execution of the patta showed, that the decree-holder had taken amicable possession, and that the decree had been thereby satisfied, and that the Munsif should not have refused to deal with the objection on its merits. The Officiating District Judge of Rungpore reversed the order and remanded the case to the Munsif to deal with the objection on its merits under s. 244. From this order the decree-holder appealed to the High Court.

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Baboo Hurry Mohun Chuckerbutty for the appellant.

Baboo Grija Sunker Mozoomdar for the respondent.

The judgment of the Court (MORRIS and PRINSEP, JJ.) was delivered by

MORRIS, J.—The question before us relates to an alleged adjustment of a decree, which was obtained on the 18th March 1876, and affirmed on appeal on the 16th August of the same year.

The decree-holder was declared by the decree entitled to partition of a specified share, and to be put in possession of the same. He took out execution in September 1879 (whereby this case comes under the provisions of Act X of 1877 as originally framed), and he was put in possession under the decree on the 20th November 1879. Thereupon the judgment-debtor objected, that, in January 1877, the decree-holder had obtained satisfaction of the decree, and that this was evidenced by a lease of the land covered by the partition-decree, which the decree-holder had given to him on that date.

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The first Court declined to take this lease into consideration, or to interfere with the possession that had been given to the decree-holder.

The Judge on appeal decided that, whether s. 258 of the Civil Procedure Code applied or not, this was a matter which the Munsif should have enquired into under s. 244; and he accordingly remanded the case to him to do this. It is against this order that the present appeal is preferred.

It seems to us that the Munsif was right in refusing to consider the matter of the lease in connection with the execution of the decree. If the decree had been adjusted in the manner alleged by the respondent, then, under s. 258, such adjustment ought to have been certified to the Court. Not having been so certified, it cannot now be recognized by the Court charged with the execution of the decree. It is urged on behalf of the judgment-debtor that s. 258 has reference only to money-decrees, and that this is apparent from its position in chap. xix of the Code in connection with the particular sections relating to money-decrees alone. But a consideration of the terms of the section leads us to a different conclusion. That section corresponds in all material respects, and carries with it the same meaning as s. 206 of the former Procedure Code (Act VIII of 1859), which manifestly deals with the adjustment of *any* decree. Again we cannot agree with the Judge that the case can be decided under the provisions of s. 244, whether s. 258 is applicable or not, for this would enable a Court in execution to deal with any question relating to the execution of a decree under s. 244, although the particular question then before it might be specially provided for by another section of the Code.

We, therefore, reverse the decision of the lower Appellate Court, and restore that of the first Court with costs.

Appeal allowed.