

APPELLATE CIVIL.

Before Mr. Justice Caspersz and Mr. Justice Coxe.

1908

November 9.

RAM LOCHAN SINGH

v.

BENI PRASAD KUMRI.

Civil Procedure Code (Act XIV of 1882) s. 492—Execution of decree—Application to a Civil Court for stay of sale in execution of a decree of a Revenue Court.

The Revenue Courts are Courts of Civil Judicature within the meaning of the Civil Procedure Code, in that their decrees, when transferred in the regular course, are to be treated in all respects as if they were passed by a Court of Civil Judicature.

Held, therefore, that an application under section 492 of the Code of Civil Procedure for stay of sale in execution of a decree of a Revenue Court in a suit under section 93 of Act XII of 1881, can be entertained by a Civil Court.

Onkar Singh v. Bhup Singh (1) dissented from.

APPEAL by the plaintiffs, Ram Lochan Singh and others.

Maharani Beni Pershad Koeri obtained a decree in the Court of the Collector of Balia, within the jurisdiction of the Allahabad High Court, under section 93 of Act XII of 1881, against the aforesaid plaintiffs on the 30th April 1897.

The decree having been partially executed in the district of Balia, was transferred to the district of Chapra, and then to the district of Bhagalpur, for execution. The property of the judgment-debtors (plaintiffs) having been advertised for sale, they put in an application under section 492 of the Code of Civil Procedure praying for an injunction to stay the sale of the properties attached in execution of the decree obtained by the defendants under the Rent Recovery Act of the United Provinces (Act XII of 1881), on the ground that the said decree was obtained fraudulently.

* Appeal from Order No. 38 of 1907, against the order of Nanda Lal Dey, Subordinate Judge of Bhagalpur, dated Jan. 5th, 1907.

(1) (1894) I. L. R. 16 All. 496.

The decree-holder denied that the decree was obtained by fraud and stated that the application for injunction was a frivolous one. The Court below having held that section 492 of the Code of Civil Procedure did not apply to the present case, inasmuch as the decree was of a Revenue Court, rejected the plaintiffs' application.

Against this decision the judgment-debtors (plaintiffs) appealed to the High Court.

Babu Jogesh Chunder Dey for the appellants.

Babu Ram Churn Mitter and *Babu Jogendra Chunder Ghose* for the respondent.

CASPERSZ AND COXE JJ. This appeal comes before us in the course of a long litigation, the termination of which is not yet in sight. On the 30th April 1897, the defendant obtained an *ex parte* decree in suit No. 29 of 1896 under section 93 of the North-Western Provinces Rent Act (XII of 1881). That decree, it is conceded, was executed, and one of the execution cases was No. 296 of 1905 in the district of Saran where, it appears, the decree of the Balia Revenue Court had been sent for execution under the provisions of the Civil Procedure Code. Satisfaction not having been obtained, execution was next taken in the district of Bhagalpur, also, in terms of the Code of Civil Procedure, and the decree-holder attached 188 bighas of land situated in that district.

Thereupon, the plaintiffs, who represent the original judgment-debtors, instituted a title suit No. 686 of 1906, in the Court of the Subordinate Judge of Bhagalpur, and applied for a temporary injunction to stay the sale in the execution case then pending and arising out of the original *ex parte* decree of 1897. The Subordinate Judge granted an *ad interim* injunction. On the 5th January 1907, he disposed of the application under section 492 of the Civil Procedure Code, and held that the decree contemplated by clause (a), section 492 of the Civil Procedure Code means a Civil Court decree, and that, as

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the decree in the present case was a decree of a Revenue Court, section 492 did not apply. He followed the decision of the Allahabad High Court in *Onkar Singh v. Bhup Singh* (1). In the result, he allowed the objection, refused to issue any injunction, and set aside the *ad interim* injunction.

On appeal before us the questions are, *first*, whether the Subordinate Judge's view of the law is correct; and *secondly*, assuming it to be correct, whether, in the circumstances, he should not have allowed a temporary injunction to issue to stay the proceedings pending the disposal of title suit No. 686 of 1906.

Upon the first branch of the case, we entertain no doubt that the Subordinate Judge's view of the law is not correct. The decision in *Onkar Singh v. Bhup Singh* (1), on which the learned Subordinate Judge placed reliance, is not one which accords with the principle laid down by the Judicial Committee in *Nilmoni Singh Deo v. Tara Nath Mukerjee* (2). The decision of their Lordships was analysed and fully considered by a Full Bench of the Allahabad High Court in *Madho Prokash Singh v. Murli Manohar* (3). This decision of the Full Bench of the same Court does not appear to have been brought to the attention of the Judges in *Onkar Singh v. Bhup Singh* (1). We are of opinion that the Revenue Courts are Courts of Civil Judicature within the meaning of the Civil Procedure Code, in that their decrees, when transferred in the regular course, are to be treated in all respects as if they were passed by a Court of Civil Judicature. To hold the contrary view would lead to various anomalies, one of which was mentioned and explained at page 303 of the report in the case of *Nilmoni Singh Deo v. Tara Nath Mukerjee* (2). Though the decree of the Revenue Court at Balia was a decree in the execution of which relief was sought to be obtained from a Court of Civil Judicature, to which it has been transferred, that decree did not lose its original character. It is only in the course of execution that the Civil

(1) (1894) I. L. R. 16 All. 496.

(2) (1882) I. L. R. 9 Calc. 295; L. R. 9 I. A. 174.

(3) (1883) I. L. R. 5 All. 406.

Court should treat such a decree in all respects as if it had been passed by itself.

The result, therefore, must be that the case is one in which it was competent to the Subordinate Judge, if he thought fit, to issue an *ad interim* injunction staying the execution proceedings.

It has been impressed upon us that we should not interfere in this case in order that the Subordinate Judge might consider whether he ought to grant a temporary injunction ; but we think that we should pass the necessary orders to save both time and further expense to the litigant parties. We have to consider whether a temporary injunction should now issue. Suit No. 686 of 1906 is one in which various questions of law are involved. Without expressing any opinion on those questions, or the issues which appear to have been framed, we think it sufficient to say that the alleged value of the property involved is Rs. 19,000 ; that the proceedings commenced more than ten years ago ; and that the chances of success are not altogether in favour of the plaintiff in that suit, which is virtually one to set aside the decree of the Revenue Court in another province. The amount for which execution has been levied comes to about Rs. 1,300. We think the proper order to pass in this case will be that, on the deposit of that amount, namely, Rs. 1,300 (one thousand and three hundred), in the Court of the Subordinate Judge within one month from this date, the Subordinate Judge do issue an injunction staying the proceedings in the execution case No. 1210 of 1906 pending in the First Munsif's Court, Bhagalpur. The amount will, of course, remain in deposit pending the result of suit No. 686 of 1906.

Appeal allowed.

S. C. O.

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