

1911

LALIT
MOHAN
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v.
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CHUCK COAL
COMPANY,
LD.

here, correctly decided, in so far as it determines that a document embodying an agreement for reduction of rent under a previously existing lease registered as required by section 17(d) of the Indian Registration Act, requires registration.

(ii) A document, which varies the amount of rent to be paid under an existing lease registered as required by section 17(d) of the Indian Registration Act, as also the incidents of such payments, namely, the date of payment and consequences of default of payment, requires registration.

The case will be returned to the Division Bench with this expression of opinion. The costs of the hearing before the Full Bench will abide the result of the appeal.

S. M.

FULL BENCH.

Before Sir Lawrence H. Jenkins, K.C.I.E., Chief Justice, Mr. Justice Woodroffe, Mr. Justice Mookerjee, Mr. Justice Carnduff and Mr. Justice D. Chatterjee.

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Sept. 5.

KARTICK CHANDRA GHOSE

v.

ASHUTOSH DHARA.*

Execution of decree—Decree for money against judgment-debtor personally—Judgment-debtor in possession as shebait—Civil Procedure Code (XIV of 1882), ss. 244, 278.

If A, in execution of a decree for money against B personally, attaches and proceeds to sell properties of which B alleges that he is in possession not in his own right, but as *shebait* of a deity to whom the properties have been dedicated, the question does not fall within the scope of section

* Reference to Full Bench in Appeal from order No. 44 of 1908.

244 of the Civil Procedure Code, but within the scope of section 278 read with section 280 of the Code.

Kuriyali v. Mayan (1) not followed.

Punchanun Bundoparhya v. Rabia Bibi (2) distinguished.

REFERENCE to Full Bench on the appeal by the judgment-debtors, Kartick Chandra Ghose and others.

The refence by MOOKERJEE and VINCENT JJ., was in the following terms :—

“On the 20th May 1907, one Ashutosh Dhara, respondent in this appeal, obtained, in the Court of the Subordinate Judge of Hooghly, a decree for money against Kartick Chandra Ghose and his two brothers, now appellant before this Court. On the 4th June 1907, Ashutosh applied for execution of his decree. As certain properties had been attached before judgment, the Court directed the issue of sale proclamation and fixed the 13th August for sale. On the 7th August, the judgment-debtors presented a petition of objection under section 244 of the Civil Procedure Code of 1882, in which they urged that the properties attached and intended to be sold were in their possession, not on their own account or as their own properties, but in trust for four idols in whose favour they had been dedicated by their ancestors under a deed of endowment executed on the 31st January, 1883. The Subordinate Judge held that the question raised fell within the scope of section 278 and not section 244, and, under the proviso to the former section, declined to make the investigation on the ground that the claim had been designedly and unnecessarily delayed. The sale then took place in due course on the 13th August, and the properties were purchased by the decree-holder. The judgment-debtors then appealed to the District Judge on the ground that the objection preferred by them fell within the scope of section 244, and that it should not have been summarily rejected without investigation. The District Judge, however, held that the judgment-debtors were the representatives, not of a party to the suit but of a deity who was not a party to the litigation. In this view, he held that the claim must be taken to have been preferred under section 278, and so affirmed the order of the Court of First Instance. The present appeal is directed against the order of the District Judge. On behalf of the appellants, reliance has been placed upon the cases of *Beg Raj Marwari v. Debyi Kundah* (3) and *Jogendra Nath Sirkar v. Gobinda Chandra Dutta* (4), in support of the view that the objection raised falls within the scope of section 244, and reference

(1) (1883) I. L. R. 7 Mad. 255.

(2) (1890) I. L. R. 17 Calc. 711.

(3) (1902) 8 C. W. N. 353.

(4) (1908) 12 C. W. N. 310.

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has also been made to some observations in the case of *Punchann Bundopadhyaya v. Rabia Bili* (1). On behalf of the respondent, reliance has been placed upon the cases of *Roop Lall Dass v. Bekan Meah* (2), *Bhajahari Pal v. Ram Lal Dass* (3), *Ram Krishna Mahapatra v. Mohunt Padma Charan Deb Goswami* (4) and *Amar Chand Kuulu v Nani Gopal Mukerjee* (5), in support of the view that the question raised is covered by section 278, and our attention has also been drawn to the case of *Ramanathan v. Levai Marakayar* (6), where a similar view was taken by a Full Bench of the Madras High Court. There is a clear conflict of judicial opinion upon this subject, and under the Rules of Court we are bound to refer the matter for decision to a Full Bench. The question which we refer for decision may be formulated as follows :—

If A in execution of a decree for money against B personally attaches and proceeds to sell property, of which B alleges that he is possession, not in his own right but as *shebait* of a deity to whom the properties have been dedicated, does the question raised fall within the scope of section 244 or 278 of the Code of 1882 ?

As the question arises in an appeal from an Appellate Order, the whole case must be referred for final decision by the Full Bench."

Hara Kumar Mitter (with him *Babu Satyendra Nath Mukherji*), for the appellants. My contention is that this case comes under s. 244. As there is a conflict of rulings, the statute has to be construed. Section 244 is clear. Section 278 has to be construed. The Legislature contemplates the party to be a *person* and not *persona*. Section 278 should be read with the following sections up to s. 283. All that the Court has to do is to investigate who is in possession. The judgment-debtor can maintain a separate suit. The question as to the liability to attachment is a mixed question of law and fact. Possession is not the only element. The Legislature never meant to say that the executing Court should decide as to who is the party agreed.

(1) (1890) I. L. R. 17 Calc. 711.

(2) (1888) I. L. R. 15 Calc. 437.

(3) (1901) 6 C. W. N. 63.

(4) (1902) 6 C. W. N. 663.

(5) (1907) 12 C. W. N. 308.

(6) (1899) I. L. R. 23 Mad. 195.

If a person has two capacities, there is no reason why his objection should be limited to one. The objection was raised as judgment-debtor. The question is not whether the objection is by the *shebait*. It does not come under s. 278. If the Legislature intended that the rights of parties could be investigated under s. 278, a decision under that section should have been given the force of a decree. Here the judgment-debtor says he is not the owner, but is in possession only. Under section 280, adjudication as to the liability to attachment is not possible.

Section 332 is for cases where the claimant has already been dispossessed.

It is against the policy of law to allow third persons to intervene: *Nga Tha Yah v. Burn* (1).

Kuriyali v. Mayan (2) is on the principle enunciated there exactly in point and approved of by the Privy Council, but doubted by the Madras Full Bench. The Privy Council case of *Prosunno Kumar Sanyal v. Kali Das Sanyal* (3) referred to.

[MOOKERJEE J. The question raised in the Madras case did not arise before the Privy Council in *Prosunno Kumar Sanyal's case* (3), and therefore that case is not binding on us.]

The question in *Punchanun Bundopadhya v. Rabia Bibi* (4) is similar and in my favour.

Any question beyond execution may be the basis of a suit, and a suit may lie.

In an executing Court the only question to be decided, is whether the attached property belongs to the judgment-debtor or not. The judgment-debtor is debarred from questioning this in another suit.

(1) (1868) 11 W. R. F. B. 8 ;
2 B. L. R. F. B. 91, 96.

(3) (1892) I. L. R. 19 Calc. 683 ;
L. R. 19 I. A. 166.

(2) (1883) I. L. R. 7 Mad. 255.

(4) (1890) I. L. R. 17 Calc. 711.

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The fact is, the judgment-debtor objects as judgment-debtor, and says that the thing belongs to another.

Babu Baidya Nath Dutt and *Babu Tarini Das Banerjee*, for the respondent, were not called upon.

Cur. adv. vult.

The judgment of the Court (JENKINS C.J., WOODROFFE, MOOKERJEE, CARNDUFF and D. CHATTERJEE JJ.) was as follows :—

The question referred for decision to the Full Bench has been formulated in the following terms :—

If A, in execution of a decree for money against B personally, attaches and proceeds to sell properties of which B alleges that he is in possession, not in his own right, but as *shebait* of a deity to whom the properties have been dedicated, does the question raised fall within the scope of section 244 or 278 of the Civil Procedure Code of 1882?

In order that a question may be determined under section 244, it must arise between the parties to the suit in which the decree was passed. The question sought to be raised is not of this description, because while B is a party to the suit in his personal capacity, the claim is advanced by him in his capacity of *shebait* of a deity who is not a party to the suit.

In the opinion of the Full Bench, therefore, the question raised does not fall within the scope of section 244. On the other hand, it falls within the scope of section 278 read with section 280.

It has been argued, however, that this view is contrary to two decisions which are binding upon the Full Bench, namely, *Kuriyali v. Mayan* (1) and *Punchann Bundopadhya v. Rabia Bibi* (2). The

(1) (1883) I. L. R. 7 Mad. 255.

(2) (1890) I. L. R. 17 Cal. 711.

first decision no doubt involves by implication the view that the question raised falls within the scope of section 244, but it is not binding upon this Court; it was approved by the Judicial Committee in *Prosunno Kumar Sanyal v. Kali Das Sanyal* (1), upon an entirely different point, namely, that section 244 does not cease to be applicable to proceedings in execution merely because the execution purchaser is a stranger to the suit. The decision in *Punchannun Bundopadhya v. Rabia Bibi* (2) is by a Full Bench of this Court, and is binding till overruled by a Special Bench. It does not, however, decide the question now in controversy, but merely deals with the converse question.

The result is that the appeal to the District Judge as also the appeal to this Court must be deemed incompetent. The appeal is, therefore, dismissed with costs of the hearing before the Division Bench and the Full Bench.

S. M.

Appeal dismissed.

(1) (1892) I. L. R. 19 Cal. 683 ; (2) (1890) I. L. R. 17 Cal. 711.
L. R. 19 I. A. 166.

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