

1882

RAGHO
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v.
BALVANT
AMRIT GOLE.

plaintiff and the creditors capable of being construed as an admission by him that he held the property as a trustee for them) claim to be paid under this instrument, although possibly they might impeach it. However, on Krishnarav's death, his creditors would be entitled in an administration suit to have the charge of Krishnarav's debts enforced in their favour, and under these circumstances it being admitted that the defendant is the only unpaid creditor, or at any rate that the property is far more than sufficient to pay them, we think that the principle established in the above cited case may well be applied, and so avoid the circuitry of suits which would otherwise be necessary. As to mortgage, exhibit 64, we cannot interfere with the District Judge's finding of fact that Krishnarav had acknowledged the mortgage debt as his own. The decree must, therefore, be reversed; and it is hereby ordered that the District Judge do take an account of what may be found due in respect of monies lent to the deceased Krishnarav by the defendant on personal security, and that in the event of the plaintiff paying to the defendant the sum so found due on taking the said account together with the sum of Rs. 1,926-8-0 found by the District Judge to be due on the mortgage debt and the costs of suit and both appeals within six months that he do recover possession of the mortgaged lands from the defendant, and that in default of his so paying as aforesaid that he do stand foreclosed.

(17)

APPELLATE CIVIL.

1882
September 7.

Before Sir Charles Sargent, Kt., Chief Justice, and Justice Kemball.

DAMODAR SHALIGRAM, PLAINTIFF, v. MALHARI AND ANOTHER,
DEFENDANTS.

Decree payable in instalments—Execution by arrest and imprisonment—Civil Procedure Code (Act X of 1877), Sec. 341.

In the execution of a decree payable by instalments the judgment-debtor cannot be arrested and imprisoned separately for default in the payment of each instalment.

UNDER section 617 of Act X of 1877, this case was referred for the opinion of the High Court by Rao Saheb W. M. Bodas, Second Class Subordinate Judge of Yeola.

The plaintiff obtained a decree against the defendants on the 29th June, 1881, for Rs. 60 and costs, the amount of the said decree to be paid in three annual instalments; each defendant to be liable for half of each instalment. On the 23rd September, 1881, the plaintiff obtained a warrant of arrest against the defendants for the amount of the costs, and Malhari was arrested and brought before the Court on the 12th October, 1881. At the request of the plaintiff he was discharged on the following day. The first instalment of the decree became due on the 17th May, 1882, and the plaintiff now sought to recover it from both the defendants by arrest and imprisonment.

The Subordinate Judge referred the following questions to the High Court :—

First.—Whether in the execution of a decree payable by instalments the judgment-debtor can be arrested and imprisoned separately for default in payment of each instalment?

Second.—If so, whether in limiting the term of imprisonment the amount of the particular instalment sought to be recovered or of the whole judgment-debt should be taken into account?

The parties did not appear in the High Court.

SARGENT, C.J.—In this case the plaintiff obtained a decree on 29th June, 1881, directing that he do recover from the defendants the sum of Rs. 60 payable in three annual instalments, each defendant to be liable for half of each instalment, with all costs on the defendants. The plaintiff obtained a warrant of arrest against the defendants on 23rd September, 1881, for the amount of the costs, under which the defendant, Malhari, was arrested and brought before the Court on 12th October, 1881. The next day he was discharged at the request of the plaintiff. The first instalment became due on 17th May, 1882, and the plaintiff now seeks to recover it by arrest and imprisonment from both defendants. The questions referred to us are :—

1. Whether in the execution of an instalment decree, the judgment-debtor can be arrested and imprisoned separately for default in the payment of each instalment?

2. If he can be, whether in limiting the term of imprisonment, the amount of the particular instalment sought to be recovered or of the whole judgment-debt should be taken into account?

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Section 341 of the Civil Procedure Code (X of 1877) after enumerating the circumstances under which the judgment-debtor is entitled to be discharged from jail, says : " A judgment-debtor discharged under this section is not thereby discharged from his debt, but he cannot be re-arrested under the decree in execution of which he was imprisoned." This section read in connection with the definition of a decree as given in the interpretation clause shows a clear intention on the part of the Legislature that the judgment-debtor should not be imprisoned more than once under the same decree pronounced by the Court as its adjudication of the rights of the parties. But it may be said that in the case of imprisonment in default of payment of an instalment, a portion only of the decree is executed, that being the only part of the decree at the time capable of execution. Sections 224, clause *b*; 230 and 235, clause *e*, show, however, that the terms " execution of a decree", " execute a decree", " enforce a decree", are used as well where the decree is being executed in part as in its entirety. It was urged that to apply the section where the decree is such that it can only be executed at intervals as the instalments fall due would be to embarrass the judgment-creditor, and seriously affect his power of enforcing his decree by arrest. This may be so, but the section is one clearly intended to operate in restriction of the power of arrest and in favour of personal liberty, and should be construed according to the plain meaning of the terms. It is to be remarked that decrees for payment of money by instalments are distinctly recognized by section 210, and express provision is made for them in section 230 in fixing the time within which execution must be applied for, and if there was any intention that the term " decree " should have other than its ordinary meaning in the application of section 341 to the execution of such decrees, we should expect that it would have been clearly expressed. The difficulty which has been suggested in the case of instalment decrees may be obviated by the decree, providing that, in default of payment of an instalment, the whole debt should become payable, and this Court has frequently remarked upon the propriety, generally speaking, of inserting such a provision. The first question must, therefore, be answered in the negative.