

We have, however, the fact that he was an attesting witness. He was a Government servant who must have understood the effect of the deed which he was attesting and which was executed by his brother who was in *vahivat* of all the family properties. The occasion of the mortgage was the necessity of raising the attachment on the family property before the marriage ceremony of one of Eruchsha's own daughters took place, and we have the uncontradicted statement of Ardeshir upon oath that Eruchsha consented to this mortgage.

For these reasons we reverse the decree of the Subordinate Judge and decree that the plaintiff will be entitled to an order that if the money due under the mortgage is not paid within six months from this date with costs and interest at the mortgage rate, the interests of Ardeshir, Phirojsha and Eruchsha's heirs in the mortgaged property be sold and that the proceeds be applied in satisfaction of the decretal debt.

Costs of this suit and appeal must be added to the mortgage debt.

Interest will run at mortgage rate up to the date of payment.

The pleaders to settle the amount of the mortgage claim.]

Decree reversed.

G. B. R.

APPELLATE CIVIL.

Before Mr. Justice Russell and Mr. Justice Chandavarkar.

GOVINDJI VIRAMJI (ORIGINAL DEFENDANT NO. 3), APPELLANT, *v.* SAKHARAM GOVINDA (ORIGINAL PLAINTIFF), RESPONDENT.*

1911.

November 9.

Civil Procedure Code (Act XIV of 1882), sections 324A, 272, 285—Execution of decree—Money lying with Collector—Prohibitory order upon Collector by another Court—The executing Court attaching the money in execution of another decree—Payment to the decree-holder—Remedy of the first decree-holder at whose instance prohibitory order was issued—Practice and procedure.

Ramchandra and others obtained a decree against Shambu and another in the Court of the Subordinate Judge, Second Class, at Chalisgaon. Those decree-

* Second Appeal No. 441 of 1910.

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holders having applied for execution by attachment and sale of certain lands, the Court transferred the decree for execution to the Collector under section 320 of the Civil Procedure Code (Act XIV of 1882). The Collector executed the decree and held the amount for payment to the decree-holders. In the meantime, the plaintiff obtained a decree for money against Ramchandra and others in the Court of the Subordinate Judge, First Class, at Dhulia; and in execution of the decree obtained attachment of the amount with the Collector by means of a prohibitory order under section 272 of the Code. About this time, the defendant obtained a decree against Ramchandra and others in the Court of the Subordinate Judge, Second Class, at Chalisgaon; and in execution of his decree obtained an order of attachment of the said amount. In obedience to this second order the amount was remitted to the Chalisgaon Court, where it was paid to the defendant. The plaintiff sued to recover the money. The lower appellate Court applied the provisions of section 285 and decreed the plaintiff's claim.

Held, dismissing the plaintiff's suit, that it was governed not by the provisions of section 285 but by those of section 324A of the Civil Procedure Code (Act XIV of 1882).

Held, further, that the prohibitory order passed by the Dhulia Court under the provisions of section 272 was *ultra vires* and could not bind the Collector in view of the provisions of section 324A under which he was acting.

Held, also, that in virtue of section 324A of the Civil Procedure Code (Act XIV of 1882) the Collector held the amount "at the disposal of the Court" (at Chalisgaon) which had transferred to him the decree for execution and which was bound to dispose of the amount in the manner and for the purposes mentioned in the third paragraph of that section; that it was open to the plaintiff to apply to the Court at Chalisgaon through the Court at Dhulia for rateable distribution under section 295; and that according to the provisions of section 324A, the Collector owed a special duty to the Chalisgaon Court and that Court alone had jurisdiction to deal with all questions as to the disposal of the amount.

SECOND appeal from the decision of H. S. Phadnis, District Judge of Dhulia, reversing the decree passed by J. Scotson, Assistant Judge of Dhulia.

Suit to recover a sum of money.

The claim arose under the following circumstances. Ramchandra and others obtained two decrees against two persons Shambu and Motiram, in the Court of the Subordinate Judge, Second Class, at Chalisgaon. They applied to execute the decrees by attachment and sale of the lands belonging to the judgment-debtors. The Court transferred the proceedings to the Collector under the provisions of section 320 of the Civil Procedure Code (Act XIV of 1882). The property was sold by

the Mamlatdar (defendant No. 2) on behalf of the Collector, who held the money for the decree-holders.

In the meantime the plaintiff Sakharam Govind obtained a decree for money against Ramchandra and others in the Court of the Subordinate Judge, First Class, at Dhulia. He applied to execute his decree and obtained attachment of the money in the hands of the Mamlatdar, by means of a prohibitory order issued under section 272 of the Civil Procedure Code, 1882. The prohibitory order was served on the Mamlatdar on the 19th March 1907.

The defendant No. 3, Govindji Viramji, also obtained a decree against Ramchandra and others in the Court of the Subordinate Judge, Second Class, at Chalisgaon. He applied to execute his decree by attachment of money in the hands of the Mamlatdar. Accordingly attachment was levied on the 12th April 1907. The Mamlatdar and the Aval Karkun (defendants Nos. 1 and 2) remitted the money to the Chalisgaon Court, where it was paid over to defendant No. 3.

The plaintiff filed the present suit against the Mamlatdar and the Aval Karkun and against Govindji Viramji, alleging that the first two defendants forwarded the amount to the Chalisgaon Court, in disobedience of the orders of the Dhulia Court, with the intention of injuring the plaintiff; and that the defendant No. 3 wrongly withdrew the amount.

The Assistant Judge who tried the suit, exempted the defendants Nos. 1 and 2 from liability on the ground that the defendants Nos. 1 and 2 were protected by the fact that they paid the money in good faith and in pursuance of the lawful orders of the Chalisgaon Court. As regards the defendant No. 3 he held that he was not liable to refund the money received by him in satisfaction of a valid subsisting decree, even though there might be some irregularity in the method of securing the payment.

On appeal, the District Judge upheld the decree so far as the defendants Nos. 1 and 2 were concerned. As regards defendant No. 3, he held that he was liable at the plaintiff's suit, for the money in the hands of the Mamlatdar having been properly

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and effectively attached by the plaintiff, the defendant No. 3 had no right to receive it. The learned Judge then applied the provisions of section 295 of the Civil Procedure Code of 1882 and distributed the amount rateably between the plaintiff and defendant No. 3.

Against this decree, the plaintiff appealed on the ground that the defendants Nos. 1 and 2 were wrongly exempted from liability; and defendant No. 3 appealed on the ground that the lower appellate Court erred in ordering rateable distribution.

N. V. Gokhale, for the plaintiff.

G. S. Rao, Government Pleader, for defendants Nos. 1 and 2.

R. R. Desai, for defendant No. 3.

CHANDAVARKAR, J. :—In applying section 285 of the old Code of Civil Procedure (Act XIV of 1882) to the facts of the case, the learned District Judge, from whose decree, reversing that of the Assistant Judge, these second appeals have been preferred, has overlooked the provisions of section 324A of the said Code.

The salient facts are these. One Ramchandra and others had obtained decrees, Nos. 178 and 179, in the Court of the Second Class Subordinate Judge at Chalisgaon against two persons. Those decree-holders having applied for execution, by attachment and sale of certain lands, that Court transferred the decrees for execution to the Collector under section 320 of the Code. The Collector in execution realised Rs. 2,785 and held that amount for payment to the decree-holders. The amount was in the actual custody of the Mamlatdar on behalf of the Collector.

In the meantime the present respondent, who had obtained a decree for money against the abovementioned decree-holder Ramchandra Goyind and others, in the Court of the Subordinate Judge, First Class, at Dhulia, applied to that Court for, and obtained attachment of, the amount in the hands of the Mamlatdar by means of a prohibitory order under section 272 of the Code, served on the latter on the 13th of March 1907.

The present appellant, who also held a decree against the same decree-holders, Ramchandra Govind and others, obtained in the Court of the Subordinate Judge, Second Class, at Chalisgaon, applied to that Court, on the 12th of April 1907, for and obtained an order of attachment of the amount in the hands of the Mamlatdar. And in obedience to this order, the Mamlatdar remitted the amount to that Court. The amount was paid by the Court to the appellant accordingly.

Neither section 272 nor section 285 has any application to these facts. Whether the amount be regarded as having been in the custody of the Court at Chalisgaon or in that of the Mamlatdar on behalf of the Collector is immaterial. In either case, the custody was held subject to certain conditions prescribed by the provisions of section 324A of the Code. In virtue of that section, the Collector held the amount "at the disposal of the Court" which had transferred to him the decree for execution. That was the Court at Chalisgaon. That Court, again, was bound to dispose of the amount in the manner and for the purposes mentioned in the third paragraph of that section. It was open to the respondent to apply to the Court at Chalisgaon through the Court at Dhulia for rateable distribution under section 295; and under clause 2 of the third paragraph of section 324A the former Court could have ordered such distribution in its discretion. According to the provisions of the section, the Collector owed a special duty to that Court, and that Court alone had jurisdiction to deal with all questions as to the disposal of the amount. The prohibitory order of the Dhulia Court could not bind the Collector in the presence of the provisions under which alone he was authorised by the Statute to act and was acting, and, therefore, that order was *ultra vires*. The respondent's title resting solely on that order, and the order failing, the decree must be reversed and that of the Assistant Judge restored with costs of this second appeal and the appeal in the District Court on the respondent.

Decree reversed.

R. B.

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