
(1873) 02 CAL CK 0008

Calcutta High Court

Case No: Miscellaneous Regular Appeal No. 211 of 1872

Mussamut Ruttanjote
Kooer

APPELLANT

Vs

Ram Dass

RESPONDENT

Date of Decision: Feb. 7, 1873

Judgement

Phear, J.

We think that the preliminary objection is a good objection and must prevail. It is admitted by both parties that the subject in dispute in the suit wherein the decree was made was in amount or value less than Rs. 5,000. A decree for the amount claimed with interest was, I understand, given on the 22nd September 1862; and the application for execution which is now brought before us was made some time in April 1872; but by that time the amount decreed had grown by the addition of interest to a sum exceeding Rs. 5,000. Upon the hearing of that application for execution, objections were raised by the judgment-debtor, who seems to have been present. The Subordinate Judge overruled those objections and directed the execution to issue. It is this order of the Subordinate Judge against which the present appeal is preferred.

2. Now by s. 11, Act XXIII of 1861, "all questions regarding the amount of any mesne profits which by the terms of the decree may have been reserved for adjustment in the execution of the decree, &c., * * * and any other questions arising between the parties to the suit in which the decree was passed, and relating to the execution of the decree, shall be determined by order of the Court executing the decree, and not by separate suit" Evidently it is just such a question as this in the section mentioned, which was determined by the order of the Subordinate Judge engaged in executing the decree, namely, by the order appealed against. The section goes on to say;--"And the order passed by the Court shall be open to appeal." This then is an order made, as it seems to me clearly, in the suit in which the decree was made, and not in a separate suit, and is an order which by the terms of this section is open to appeal.

2. S. 22, Act VI of 1871, is the enactment which now provides for the course of appeal (reads). Now the present appeal is an appeal from the Subordinate Judge, and it will therefore lie to the District Judge, unless within the meaning of this section the subject-matter in dispute exceeds Rs. 5,000.

3. Baboo Romesh Chunder Mitter has urged upon us with much force that the subject-matter in dispute between the parties to this appeal is the amount which is at this time due under the decree, and which will be levied against one of them if the order of the Subordinate Judge now appealed against is allowed to have force. It appears to me however that, when the decree or order which is the subject of appeal is a decree or order made in a suit, whether during the execution proceedings or previously thereto, the subject-matter in dispute within the meaning of this section is the subject-matter in dispute in that suit, and not the mere amount of money which the order itself may directly affect. This view has already been taken by Judges of this Court, for it has been lately determined by a decision. In the matter of Duli Chund 9 B.L.R., 195 that the subject-matter in dispute in a suit is the subject-matter for which the plaint is brought, and is not limited in the case of an appeal to the amount which the decree may have awarded as between the parties to the appeal. It appears to me that, if we put any other construction than that which I have mentioned upon the words, we should make the section have an operation which could not have been contemplated by the Legislature, for it would cause the appeal to shift from one Court to the other, merely by such lapse of time as would suffice to make an amount which when decreed fell below Rs. 5,000 grow by the increment of the interest to a sum above Rs. 5,000. It appears to me very clear that the order which is now appealed against is an order made in the course of a suit, the original subject-matter of dispute in which was by the admission of the parties an amount less than Rs. 5,000, and I think for that reason, under s. 22, Act VI of 1871, the appeal lies to the District Court, and not to this Court. The application must be rejected with costs.

¹ Act VI of 1871, s. 22.--"Appeals from the decrees and orders of Subordinate Judges and Munsifs shall, when such appeals are allowed by law, lie to the District Judge, except where the amount or value of the subject-matter in dispute exceeds Rs. 5,000, in which case the appeal shall lie to the High Court."

² Before Mr. Justice L.S. Jackson and Mr. Justice Ainslie.

Ramanoogra Sahoy and Another (Defendants) v. Byjnath Lall (Decrer-Holder)*

The 15th February 1871

Appeal--Execution--Jurisdiction.

Baboo Mohesh Chandra Chowdhry for the respondents.

Baboo Khetter Nath Bose for the appellant.

The judgment of the Court was delivered by JACKSON, J.--The appeal in this case lay properly to the Zillah Judge, The circumstance of this Court having for special reasons thought proper to call up the appeal in the original case from the Court below, and to try it here as a regular appeal will not entitle the parties to prefer an appeal, directly to this Court in the proceedings in execution of the decree passed in that case, The proceeding will be remitted to the Zillah Judge, who will admit the appeal, and proceed to dispose of it in the same manner as if it had been originally presented in his Court.

* Miscellaneous Regular Appeals Nos. 380 and 430 of 1870, from the orders of the Subordinate Judge of Tirhoot, dated the 22nd August 1870