

CIVIL RULE.

Before Woodroffe and Chitty JJ.

JATRA MOHAN SEN

v.

SECRETARY OF STATE FOR INDIA.

Jurisdiction—Deficit court-fees whether recoverable by attachment of movables.

Where after the dismissal of a suit, the Court ordered the deficit court-fee to be paid by the plaintiff and, on his default, of its own motion ordered the attachment of his movables :—

Held, that the Court had no jurisdiction to do so.

CIVIL RULE obtained by Jatra Mohan Sen, the plaintiff.

The petitioner instituted a title suit in the Court of the Additional Munsif of Patiya, who, after disposing of the suit, held that it had been undervalued and that on a proper valuation the full court-fee would be Rs. 30-4, and on 14th March 1917 ordered the deficit court-fee of Rs. 20-4 to be paid within four days. The plaintiff did not pay the same as he did not wish to proceed further in the matter. On the 29th March 1917, the said Munsif directed the realisation of the deficit court-fee by attachment of the plaintiff's movable properties, his orders being as follows :—

“ 14th March 1917. Judgment delivered. The suit is dismissed against the contesting defendants and *ex parte* against absent defendant as *per* judgment passed in T. S. No. 443—16, with which it is analogous.

“ The plaintiff must pay the deficit court-fee of Rs. 20-4 for Rs. 270 within 4 days.

“ 29th March 1917. The sum of Rs. 20-4 due from the plaintiff on account of deficit court-fee has not been deposited as directed by order

* Civil Rule No. 218 of 1918, against the order of J. C. Twidell, District Judge of Chittagong, dated July 16, 1917.

dated 14th March 1917. Let the amount be recovered by attachment of movables."

Thereupon, the plaintiff preferred an appeal making the Secretary of State for India in Council respondent. The District Judge of Chittagong dismissed it holding that it was not maintainable and awarded costs to the Secretary of State, who was not a party to the original suit. The judgment was as follows:—

"16th July 1917. Heard. It is objected that the order complained of is not appealable. The learned pleader for the appellant is unable to show any section of any law under which the order falls. Possibly it may be within the scope of section 151 of the Civil Procedure Code. If so, it is not appealable.

"I do not think that any appeal lies in this case.

"The appeal is dismissed, with costs. Pleader's fee Rs. 8."

The plaintiff then moved the High Court, under section 115 of the Civil Procedure Code, on the grounds that the order passed by the Munsif was without jurisdiction and the Court of Appeal had failed to exercise a jurisdiction vested in him in not setting aside the apparently illegal order of the Munsif. On 3rd April 1918, Chitty and Walmsley JJ. issued a Rule calling upon the Secretary of State for India to show cause why the orders complained of should not be set aside.

Babu Dhirendra Lal Kastgir and Babu Prabodh Kumar Das, for the petitioner.

No one appeared for the opposite party.

WOODROFFE AND CHITTY JJ. No one appearing to show cause, we make the Rule absolute. No costs. If the sum of Rs. 20-4 has been paid, it will be returned.

G. S.

Rule absolute.

1918

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