

Before Mr. Justice Tottenham and Mr. Justice Ghose.

SRI BULLOV' BHATTACHARJI (JUDGMENT-DEBTOR) *v.* BABURAM
CHATTOPADHYA AND ANOTHER (DECREE-HOLDERS).*

1885
January 23.

Execution of Decree—Second appeal from order passed in execution of decree upon a bond specially registered under s. 53 of Act XX of 1866—Mofussil Small Cause Courts, Suit cognisable by—Act XX of 1866, ss. 53 and 55—Code of Civil Procedure, Act XIV of 1882, ss. 244 and 586.

A suit upon a bond specially registered under the provisions of s. 53 of Act XX of 1866 for an amount less than Rs. 500 is cognizable by a Mofussil Court of Small Causes, and under s. 586 of the Code of Civil Procedure no second appeal lies to the High Court against an order passed on an application for execution of a decree made in such a suit.

Quere, whether an appeal lies at all against such an order passed in proceedings taken in execution of such a decree.

THE decree, of which the right to execution formed the subject of this appeal, was dated the 13th July 1871, and was passed upon a bond, specially registered under the provisions of s. 53 of Act XX of 1866, the amount of the bond being less than Rs. 500.

In the Munsiff's Court the judgment-debtor objected to execution of the decree being granted on the ground that the right thereto was barred by limitation; that the interest claimed by the decree-holder was excessive; and that he was not in possession of any property belonging to his deceased father against whom the decree had been passed.

The Munsiff held that the decree was not barred by limitation, that the decree-holder was not entitled to interest at a higher rate than 12 per cent. per annum, and that the allegation by the judgment-debtor as to the non-possession of any property belonging to his father's estate was unfounded. The Court accordingly granted execution allowing interest at the modified rate.

Both parties appealed to the Judge against this decision, the judgment-creditor contending that the lower Court erred in awarding interest at a rate lower than that claimed.

* Appeal from Appellate Order No. 241 of 1884, against the order of W. F. Meres, Esq., Judge of Midnapur, dated the 11th of July 1884, modifying the order of Baboo Joy Gopal Sinha, Munsiff of Tamluk, dated the 17th of November 1883.

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The plea of limitation was abandoned by the pleader for the judgment-debtor, who contended that the Court was wrong in granting execution against his client at all, and there was no proof that he had inherited any property from his father.

The lower Appellate Court, however, upheld the decision of the Court below as to the right to execution, and further held that the judgment-creditor was entitled to interest at a rate higher than that allowed by the Munsiff and modified the order accordingly.

*The judgment-debtor now specially appealed to the High Court, and the only points raised in the appeal was the preliminary question raised on behalf of the respondent that, no second appeal lay at all, and the contention raised on behalf of the appellant that, if that were so, no appeal lay at all from such an order.

Baboo *Uma Kali Mukerjee* for the appellant.

Baboo *Doorga Mohun Dass* for the respondent.

The nature of the arguments upon the preliminary objection appear sufficiently in the judgment of the High Court (TOTTENHAM and GHOSE, JJ.) which was delivered by

TOTTENHAM, J.—The respondent's pleader has taken a preliminary objection to the hearing of this appeal. He has contended that no second appeal lies to this Court in this case; and also that no appeal lay in the case at all from the decision of the first Court.

The subject of the appeal is as to the amount of interest to be recovered under a certain decree. The decree is dated the 13th July 1871. It was passed upon a bond specially registered under Act XX of 1866, and was made under the provisions of s. 53 of that Act. The amount of the bond was less than Rs. 500. The respondent's pleader has urged that, so far as this second appeal is concerned, the original suit having been one in the nature of a case cognizable by a Court of Small Causes, and the amount involved in it having been less than Rs. 500, a second appeal to this Court is barred by s. 586 of the Code of Civil Procedure. He has further contended that, by the terms of s. 55 of Act XX of 1866, no appeal at all lay from the order of the first Court. For the appellant it has

been urged that the case was not one cognizable by a Court of Small Causes; that nothing in Act XX of 1866 bars an appeal against an order passed in the execution of a decree made under s. 53; and that the order in question passed by the lower Appellate Court, being one of a nature contemplated by s. 244 of the Code, a second appeal would lie.

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The decisions in this Court have been to the effect that no appeal lies against any order passed even in the execution department connected with a decree made under s. 53 of Act XX of 1866; but a different view of that question has been taken in Bombay and Allahabad. The High Courts in those places have held that, although the decree itself under s. 53 is final, there is no bar to an appeal upon any question raised in the execution department. Upon that point we propose to give no decision in the present instance; for we think that this appeal can be disposed of upon the other ground taken by the respondent's vakil, namely, that no second appeal lies to this Court.

For the appellant it has been contended that this case cannot be treated as one of a nature cognizable by a Court of Small Causes, because the decree was made under the special provisions of s. 53 of Act XX of 1866. A ruling of this Court in the case of *Nilcomul Banerjee v. Mudoosoodun Chowdhry* (1) was brought to our notice. The head-note is that the Small Cause Court of Calcutta had no jurisdiction to make a decree under s. 53 of the Registration Act; and that is the only authority which the appellant's vakil was able to show in support of his contention that the present suit is not of a nature cognizable by a Court of Small Causes. It appears to us, however, that this ruling does not govern Small Cause Courts in the mofussil. The particular reasons given by the High Court for that decision do not apply to Mofussil Courts. We see nothing which would take away from Mofussil Small Cause Courts the jurisdiction to deal with a claim passed upon a bond specially registered under Act XX of 1866. We think that the suit was clearly one of a nature cognizable by a Small Cause Court in the mofussil. It has been ruled also in this Court that s. 586, which bars a second appeal in cases of that nature in which the original suit relates to a

(1) 14 W. R., 473; 6 B. L. R., 177.

1885 sum less than Rs. 500, applies equally to proceedings in execution as to a decree itself. The ruling is to be found in the case of *Debee Pershad Singh v. Syud Delwar Ali* (1), and the contention before us of the appellant's pleader himself, if correct, shows that s. 586 is equally applicable to proceedings in execution and to decrees; for, according to him—and he is probably right—the order passed by the lower Court comes within the purview of s. 244, and is therefore a decree. Section 586 relates to appeals from appellate decrees, not to appeals from orders.

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The vakil for the appellant further urged that the amount now in dispute is more than Rs. 500, and that, therefore, a second appeal will lie. But the terms of s. 586 do not refer to the amount in dispute at the time the appeal is preferred, but to the amount or value of the subject-matter of the original suit. In this the original suit related to a sum less than Rs. 500. It seems to us, therefore, clear that no second appeal lies.

The pleader for the appellant asked us that, should we hold that no second appeal lies, to decide further that no first appeal lay; and that upon that ground the order he complains of should be set aside. But this is not a point which is properly before us at the present time. Should it come before the Court in proper form it will have to be considered.

The appeal is dismissed. We make no order as to the costs of this appeal.

Appeal dismissed.

Before Mr. Justice O'Keefe and Mr. Justice Trevelyan.

1885
February 8.

AMBIGA DASIA (PLAINTIFF) v. NADYAR UMIAND PAL (AND ON HIS DEATH HIS SONS, AKHAI COOMAR PAL AND OTHERS) (DEPENDANTS.)^a
Appeal—Award—Order setting aside decree upon award—Civil Procedure Code (Act XIV of 1882, s. 521).

All matters in dispute in a suit were referred to arbitration. An award was duly made and filed, and a decree passed in accordance with the terms thereof. Subsequently, on the application of the plaintiff in the suit, the Court passed an order setting aside the decree and the award, and ordering the case

* Appeal from Appellate Order No. 188 of 1883, against the order of Babu Brojendra Coomar Seal, Bai Bahadur, Judge of Bankura, dated 23rd of January 1883, reversing the order of Babu Jogendra Nath Bose, Bai Bahadur, Munsiff of Gungajolghali, dated the 4th of December 1882.

(1) 12 W. R., 86.