

1876

IN THE
MATTER OF
THE PETITION
OF
HARSHANKAR
PARSHAD.

of "*mutafarrikdt*," or miscellaneous proceedings or cases, as opposed to "*nambari*," or regular suits, and appeals from orders passed in proceedings in execution have up to the present time been filed as miscellaneous appeals. We are, therefore, of opinion that the Court had power to stay execution under the circumstances stated in the reference.

1876.

May 11.

BEFORE A FULL BENCH.

(*Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Turner, Mr. Justice Spankie, and Mr. Justice Oldfield.*)

GAYA PARSHAD (DECREE-HOLDER) v. BHUP SINGH AND OTHERS
(JUDGMENT-DEBTORS.)

*Act VIII of 1859, s. 6—Act XXIII of 1861, s. 33—Execution of Decree—
Miscellaneous Proceedings—Transfer.*

A District Court is competent, under s. 6, Act VIII of 1859, and s. 33, Act XXIII of 1861, to transfer to its own file proceedings in execution of decree pending in a Court subordinate to it (1).

The District Judge of Mirzapur was informed by the Subordinate Judge that a person applying in his Court for the execution of a decree was a person to whom he owed money, and that he considered himself precluded by that fact from entertaining the application. The District Judge consequently transferred the case to his own file by an order purporting to be made under s. 25, Act VI of 1871, and eventually rejected the application.

On appeal to the High Court by the decree-holder it was contended that the District Judge was not competent to transfer the case.

The Court (Pearson and Oldfield, JJ.), observing that the Subordinate Judge was not precluded from executing the decree himself by the provisions of s. 25, Act VI of 1871, and that that enactment contained no provisions enabling a District Judge to call up and place on his own file a case of execution of decree pending on the file of a subordinate Court, referred the following question to a Full Bench, *viz.*—

"Whether he was competent to do so under the terms of s. 6, Act VIII of 1859, or s. 33, Act XXIII of 1861, or otherwise?"

(1) See preceding case, p. 178, note (1).

The *Junior Government Pleader* (Babu *Dwarka Nath Banarji*) and Munshi *Hanuman Parshad*, for the appellants.

Pandit *Ajudhia Nath* and Babu *Oprokash Chandar*, for the respondents.

The *Junior Government Pleader*.—There is no law which authorizes the transfer of proceedings in execution of decree. The term “suit” in s. 6, Act VIII of 1859, does not include them. The term “appeal” in the same section means an appeal against a decree. Proceedings in execution of decree are not miscellaneous proceedings within the meaning of s. 38, Act XXIII of 1861.

Pandit *Ajudhia Nath*.—The term “suit” embraces all proceedings relating to the suit whether before or after decree. The term “appeal” includes miscellaneous appeals. The terms of s. 38 are large enough to include proceedings in execution. The intention of the section is clear and a reasonable construction must be placed on it. It is a curious state of things if such proceedings cannot be transferred, and other kinds of cases can.

The opinion of the Full Bench was as follows :—

In our judgment the provisions of s. 6, Act VIII of 1859, are extended to miscellaneous proceedings, and inasmuch as we have this day held on a reference in the case of *Harshankar Parshad* that proceedings in execution fall within the term “miscellaneous proceedings” in s. 38, we reply that the Judge had power to transfer the proceedings in the case out of which this reference arose.

BEFORE A FULL BENCH.

1875
May 11.

(*Mr. Justice Pearson, Mr. Justice Turner, Mr. Justice Spankie, and Mr. Justice Oldfield.*)

RAM DIAL AND OTHERS v. RAM DAS AND ANOTHER.*

Act VIII of 1859, s. 254—Sale in Execution—Defaulting Purchaser—Appeal—High Court—Appellate Civil Jurisdiction—Division Court—Letters Patent, cl. 10.

An appeal lies from an order passed on an application under s. 254, Act VIII of 1859, to make a defaulting purchaser liable for the loss occasioned by a re-sale.

* Appeal under cl. 10, Letters Patent, No. 3 of 1875.