

thereof an order be made reversing the order of the Judge of Agra of the 31st May, 1876, and ordering that the Rs. 13,097-7-9, with such interest as they may be entitled to under the order of the 18th May, 1876, be paid to the decree-holder; and that the appellants have the costs in all the lower Courts subsequent to the petition of objection of the 18th May, 1876, and the costs of this appeal.

Solicitors for the Appellant: Messrs *Watkins and Lattey*.

1880

HIRA LAL
v.
BADRI DAS

APPELLATE CIVIL.

1880
April 22.

Before Mr. Justice Olfield and Mr. Justice Straight.

GULZARI LAL (DEFENDANT) v. JADAUN RAI (PLAINTIFF).*

Suit to establish Right to Attached Property—Jurisdiction.

Held that, in the case where a person has preferred a claim to property attached in the execution of a decree, on the ground that such property is not liable to such attachment, and an order is passed against him, and he sues to establish his right to such property, the value of the subject-matter in dispute in such suit, for the purposes of jurisdiction, will be the amount of such decree. Second Appeal No. 320 of 1876, decided the 16th May, 1876 (1), followed.

THE plaintiff in this suit claimed a declaration of his proprietary right to certain wheat and gram valued at Rs. 1,200, and the cancellation of an order made by the Munsif of the city of Moradabad on the 17th May, 1876, disallowing his claim to the same. This grain had been attached by the defendant, when in the possession of the plaintiff, as the property of the defendant's judgment-debtor, in execution of a decree for Rs. 222-13-6. The suit was instituted in the Court of the Subordinate Judge of Moradabad, by whom the suit was dismissed. On appeal by the plaintiff the District Judge gave him a decree in respect of the wheat.

On appeal by the defendant to the High Court it was contended that the suit should have been instituted in the Munsif's Court, the value of the subject-matter in dispute being the amount of the decree

* Second Appeal, No. 526 of 1879, from a decree of W. Young, Esq., Judge of Moradabad, dated the 6th February, 1879, modifying a decree of Maulvi Wajih-ullah Khan, Subordinate Judge of Moradabad, dated the 11th April, 1877.

(1) Unreported.

1889
 ULZANI LAL
 vs
 ADAUN RAI.

in execution of which the grain had been attached, which was under Rs. 1,000.

Mr. Conlon, Munshi *Hanuman Prasad*, and Babu *Ratan Chand*, for the appellant.

Pandit *Bishambhar Naih* and *Shah Asad Ali*, for the respondent.

The judgment of the Court (OLDFIELD, J. and STRAIGHT, J.) was delivered by

OLDFIELD, J.—We are constrained to allow an objection taken by appellant that the Subordinate Judge had no jurisdiction to try this suit. The claim is to have declared the plaintiff's right to some grain stored in pits, by setting aside an order of the Munsif for bringing the grain to sale in execution of a decree held by defendant against a third party, his judgment-debtor. A course of decisions of this Court has held that the value of the subject-matter in dispute for determining jurisdiction will be in such cases the amount of the decree in satisfaction of which it is sought to bring the property to sale.—S. A. No. 320 of 1876, decided the 16th May, 1876 (1). We decree the appeal and set aside the proceedings in the lower Courts, and direct that the plaint be returned to the plaintiff in order that he may, if so advised, present it in the proper Court. Each party will bear their own costs in all Courts.

Appeal allowed.

1889
 April 5.

Before Mr. Justice Pearson and Mr. Justice Straight.

BIKA SINGH AND OTHERS (DEFENDANTS) v. LACHMAN SINGH AND OTHERS (PLAINTIFFS).*

Hindu law—Mitakshara—Mortgage by a father of ancestral property—Sale of father's rights and interests in the execution of decree—Liability of Son's share.

The undivided estate of a joint Hindu family consisting of a father and his minor sons and grandsons, while in the possession and management of the father, was mortgaged by him as security for the re-payment of moneys borrowed by him. The lender of these moneys sued the father to recover them by the sale

* Second Appeal, No. 1150 of 1879, from a decree of W. Duthoit, Esq., Judge of Shahjahanpur, dated the 28th August, 1879, modifying a decree of Babu Becha Ram Chuckerbati, Munsif of Data Ganj, dated the 10th June, 1879