

than the circumstances of the case required. That relief was confined to a simple declaration of title and the setting aside of the order of the Munsif in the execution department by removal of the attachment, both requirements being included in sch. ii, art. 17 of the Court Fees Act. No ruling of this Court antagonistic to the view now taken has been cited, we therefore overrule appellant's objection on this point. (The learned Judge then proceeded to dispose of the other pleas in appeal.)

1878

 GULZARI
 MAL.
 v.
 JADAUN R

Before Mr. Justice Pearson and Mr. Justice Turner.

1878
November

PALAK DHARI RAI AND OTHERS (JUDGMENT-DEBTORS) v. RADHA
 PRASAD SINGH (DECREE-HOLDER).*

*Appeal to Her Majesty in Council—Act X of 1877 (Civil Procedure Code), ss. 594,
 595, 596—Interlocutory Order—Order.*

The District Judge of Gházipur recalled to his own file the proceedings in the execution of a decree which were pending in the Court of the Subordinate Judge of Sháhábád, and disallowed an application for the execution of the decree which had been preferred to that Judge. The High Court, on appeal from the order of the District Judge, annulled his order as void for want of jurisdiction, and remitted the case in order that the application might be disposed of on its merits, directing that the record of the case should be returned to the Subordinate Judge of Sháhábád. On an application for leave to appeal to Her Majesty in Council from the order of the High Court, held that such order was in the nature of an interlocutory order, and was not one from which the High Court could or ought to grant leave to appeal to Her Majesty in Council.

THIS was an application for leave to appeal to Her Majesty in Council from an order of the High Court, dated the 21st December, 1877, made under the following circumstances: A decree dated the 29th November, 1856, made by the Sudder Court on appeal, which modified a decree made by the District Judge of Gházipur, dated the 14th April, 1856, was transferred by the District Judge, while in course of execution, for execution by the Principal Sudder Ameen of Gházipur. The Principal Sudder Ameen, after the proceedings in execution of the decree were transferred to him, granted a certificate for the execution of the decree within the jurisdiction of the Subordinate Judge of Sháhábád. On the 5th March,

* Application, No. 8 of 1878, for leave to appeal to Her Majesty in Council.

1878

PALAK
HARI RAY
v.
DHA PRASAD
SINGH.

1877, the judgment-debtors petitioned the District Judge of Gházipur to call for the proceedings pending in the Court of the Subordinate Judge of Shahabad on the ground that there were irregularities in them. The District Judge complied with the petition, and having arrived at the conclusion that all the proceedings which had been taken in execution were void for want of jurisdiction, and that the execution of the decree was barred by limitation, disallowed on the 13th April, 1877, an application for execution of the decree which had been made to the Subordinate Judge of Shahabad on the 19th March, 1877, being in his own opinion warranted in so doing by the provisions of ss. 290 and 292 of Act VIII of 1859. He rested this opinion on the erroneous view that the decree was one of the Court of the District Judge of Gházipur. The decree-holders having appealed to the High Court against the order of the District Judge, the High Court (PEARSON, J. and TURNER, J.) on the 21st December, 1877, pointing out the error of the District Judge, and observing that ss. 290 and 292 of Act VIII of 1859 did not empower the District Judge to meddle with the Court executing the decree in the Shahabad District, his Court not being either the Court which made the decree or having appellate jurisdiction in respect of the decree or the execution thereof, annulled the order of the District Judge dated the 13th April, 1877, as void for want of jurisdiction, and remitted the case that the application for execution might be disposed of on the merits, and directed that the record of the case should be returned to the Subordinate Judge of Shahabad.

On the 19th June, 1878, the present application was made on behalf of the judgment-debtors for leave to appeal to Her Majesty in Council from the order of the High Court dated the 21st December, 1877.

Mr. *Howard*, for the petitioners.

Lala *Lalta Prasad*, for the opposite party.

The Court (PEARSON, J. and TURNER, J.) made the following order :

TURNER, J.—This Court has simply set aside an order of the Judge of Gházipur calling on to his own file proceedings pending in the Court of the Subordinate Judge of Shahabad, and has directed that the proceedings be remitted to the Shahabad Court that the applica-

tion presented to that Court may be disposed of. When it is disposed of the decision may be appealed, and the superior Court which finally determines the application may have power to grant leave of appeal from its decision to Her Majesty in Council. The question of the competency of the Shahabad Court to entertain the application may then be raised. The order before us is in our judgment in the nature of an interlocutory order and not an order from which we can or ought to give a certificate for appeal to the Privy Council. The learned counsel's argument, based on the provisions of s. 594 of Act X of 1877, that the word "decree" embraces judgment and order, does not support the contention that the Court can or ought to give leave to appeal from any order. The certificate is refused with costs.

1878

PALAK
DHARI K
v.
RADHA P
SAD SING

Application refused.

PRIVY COUNCIL.

ZAIN-UL-ABDIN KHAN (DEFENDANT) *v.* AHMAD RAZA KHAN
AND OTHERS (PLAINTIFFS).

P. C.*
1878
November
& 22.

[On appeal from the High Court of Judicature at Allahabad, North-Western Provinces.]

Act VIII of 1859, ss. 109, 110, 111, 119, 147—Ex-parte Judgment—Appeal.

The provision in s. 119 of Act VIII of 1859, that "no appeal shall lie from a judgment passed *ex-parte* against a defendant who has not appeared," must be understood to apply to the case of a defendant who has not appeared at all, and not to the case of a defendant who, having once appeared, fails to appear on a subsequent day to which the hearing of the cause has been adjourned.

THIS was an appeal from a decision of a Division Bench of the Allahabad High Court, dated the 26th August, 1875, dismissing an appeal from an order of the Subordinate Judge of Zila Moradabad, dated the 8th April, 1874.

The judgment of the High Court was as follows :

"The suit was instituted on the 14th September, 1872, and after much delay, owing to the residence of both parties in foreign territory, the hearing was, at the request of the pleaders of both parties,

* *Present* :—SIR J. W. COLVILLE, SIR B. PEACOCK, SIR M. E. SMITH, and SIR R. P. COLLIER.