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that this case comes within s. 313, and that the Civil Courts had jurisdiction to entertain the application.

The appeal will therefore be allowed with costs, and the Judge below is directed to hear the application on its merits.

OLDFIELD, J.—I concur.

*Appeal allowed.*

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October 21.

*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Oldfield.*

GULZARI LAL (PLAINTIFF) v. DAYA RAM AND ANOTHERS (DEFENDANTS).\*

*Execution of decree—Transfer of decree—Civil Procedure Code, ss. 232, 244—Appeal—Act III of 1877 (Registration Act), s. 28.*

THE words of s. 28 of the Registration Act (III of 1877), "some portion of the property" should not be read as meaning some *substantial* portion. *Sheo Dayal Mal v. Hari Ram* (1) dissented from.

The holders of a decree for the sale of mortgaged property transferred the same to *M* by instruments which were registered at a place where a small portion only of the property was situate. Subsequently *M* transferred the decree to other persons, and the co-transferees applied under s. 232 of the Civil Procedure Code to have their names substituted for those of the original decree-holders. The judgment-debtor opposed the application on the grounds that *M's* name had not been substituted for the names of the original decree-holders who had transferred to him, and that the transfers to *M* were inoperative, as the instruments of transfer had not been registered at the place where the substantial portion of the mortgaged property was situate, in accordance with s. 28 of the Registration Act (III of 1877). It appeared that no notice had been issued to *M*, under s. 232 of the Civil Procedure Code, that he was dead, and that his legal representatives had not been cited as required by law. The application was allowed by the Courts below.

*Held* that the matter involved questions arising between the parties to the decree or their representatives within the meaning of s. 244 (e) of the Code, and that the order allowing the application was therefore a decree within the definition of s. 2, and was appealable as such.

*Held* that, even assuming that the judgment-debtor had a *locus standi* to raise the objection that notice had not been issued to the applicants' transferor, he had no possible interest in the question, and could not be prejudiced by the passing of the order; that it was not necessary to cite the representatives of the transferor; and that the order not being one upon which execution of the decree could issue, but merely for a transfer of names, the objection that the transferor had not been cited under s. 232 was not a substantial one.

\* Second Appeal No. 77 of 1886, from an order of G. Lang, Esq., District Judge of Bareilly, dated the 14th July, 1886, affirming an order of Maulvi Muhammad Abdul Qayum Khan, Subordinate Judge of Bareilly, dated the 1st May, 1886.

*Held* that the objection in reference to s. 28 of the Registration Act could only properly be raised between the transferor and the transferee, and not by the judgment-debtor, and moreover had no force.

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*Held* that it could not be said that where a decree has been assigned by one assignor to another, the substitution of his name on the record in lieu of that of the original decree-holder was a condition precedent to the assignor's passing title under the assignment.

On the 3<sup>rd</sup> September, 1882, Hayat Begam and Amanat Ali obtained a decree against Sheo Narain and Gulzari Lal for the sale of certain mortgaged property. On the 2nd October, 1882, Hayat Begam transferred her rights and interests in the decree by sale to Muhammad Raza Khan; and on the 7th October, 1882, Amanat Ali similarly transferred his rights and interests in the decree to the same person. These transfers were made by instruments which were registered at Bareilly, where a small portion only of the mortgaged property, worth Rs. 15, was situated. The remaining and larger portion of the mortgaged property was situate in the Pilibhit district. Subsequently Muhammad Raza Khan transferred the decree by sale to Daya Ram and another person. In December, 1885, these transferees applied to have their names inserted in the decree as holders of the same in the place of the original decree-holders. Gulzari Lal, judgment-debtor, objected to this application, contending, amongst other things, that Daya Ram and his co-transferee were not entitled to have their names substituted for the original decree-holders, and to execute the decree, as the name of Muhammad Raza Khan, who had transferred to them, had not been substituted for the names of the original decree-holders, who had transferred to him; and that the transfers to Muhammad Raza Khan were inoperative, as the deeds of transfer had not been registered in accordance with the provisions of s. 28 of the Registration Act (III of 1877). These and the other objections raised by the judgment-debtor were disallowed by the Court of first instance (Subordinate Judge of Bareilly), which directed "that the application for transfer be allowed." The judgment-debtor appealed to the District Judge of Bareilly, who rejected the appeal.

The judgment-debtor appealed to the High Court, on the grounds taken by them in the Court of first instance which have been mentioned above, and on the further ground that the

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proceedings were irregular, as the heirs of Muhammad Raza Khan, the transferor, had not been cited as required by law.

A preliminary objection was taken on behalf of the respondents that the appeal would not lie.

Mr. *Pogose* and Babu *Jogindro Nath Chaudhri*, for the appellant.

Munshi *Hanuman Prasad* and Pandit *Bishambhar Nath*, for the respondents.

In respect of the preliminary objection, the Court delivered the following judgments :—

EDGE, C.J.—A preliminary objection has been taken by the pleader of the respondents, namely, that no appeal lies from the order made by the Judge.

It is admitted by Pandit *Bishambhar Nath* that the appellant before us is a representative of the judgment-debtor, who was one of the parties to the original suit, under s. 244, Civil Procedure Code. So we need not inquire further as to what his position was. It is also admitted that the appellant did, on the application under s. 232, oppose the transfer, and on the ground that the respondent was not entitled to have execution of decree. There was thus distinctly a question arising between the parties or their representatives. In order to see if it comes under s. 214, let us see what it was about. The application by the assignee of the decree was made under s. 232 for transfer and execution, made with the object of having the fruits of the decree transferred to him. Under these circumstances there were questions raised between the parties to the suit or their representatives, and those questions related to the execution of the decree.

Is this order therefore appealable? Under s. 2 of the Civil Procedure Code, “decree” is defined as an “order determining any question mentioned or referred to in s. 244.” It is perfectly obvious that when the order was made for this transfer, it determined questions which were raised between the present appellant and the respondent.

Under these circumstances I am of opinion that an appeal does lie.

OLDFIELD, J.—I concur.

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The appeal was then heard. The points urged on behalf of the appellant are stated in the judgment of Edge, C.J.

EDGE, C.J.—In this case an application under s. 232, Civil Procedure Code, was made by the respondent for the purpose of obtaining execution of a decree, of which he was the assignee.

A decree had been originally obtained by Hayat Begam and another in September, 1882, and had been assigned by them to Hasan Raza Khan, who assigned to the respondent before us.

Three objections have been taken by Mr. *Pogose* to the order made in this case :—

1. That the transferor had no notice issued to him under s. 232, Civil Procedure Code.

There are two points to consider in this objection :—

First, is the present appellant a person who can raise the objection? The present appellant is neither the original decree-holder nor the intermediate decree-holder, but a judgment-debtor. It is admitted by Mr. *Pogose* that if the present assignee of the decree were to obtain execution of the decree against his client, the original or intermediate decree-holder could not obtain execution. How then could the present judgment-debtor be prejudiced by the passing of this order? It is not suggested that the judgment-debtor could have raised any stronger objections to the execution being issued to Hasan Raza Khan, than he could have to its being issued to the present assignee. Consequently, I fail to see how the judgment-debtor can have any possible interest in the question as to whether the transferor had notice under s. 232, even assuming that the judgment-debtor had a *locus standi* to raise the objection. Secondly, the objection arises under the proviso to s. 232, Civil Procedure Code. The penalty imposed by the proviso is that there should be no power to execute, if the proviso be not complied with. The transferor appears to be dead. But Mr. *Pogose* argues that if he were dead, it should be ascertained who his representatives are, and that the notice should have been served on them. I am bound to say that that would be imposing difficulties which I do not think it was intended to impose. Further, it is contended that where there

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are more transferors than one, they should all be cited. It may be so. But the order appealed against is not an order for the execution of the decree, but merely for a transfer of names. Whether the order of the Subordinate Judge was meant to have been an order on which execution was to issue, I cannot say; but execution clearly cannot issue until an application has been made. If there is anything in point, it may be urged when the application in execution has been made. I seriously doubt if Mr. Pogose's client can avail himself of the fact that these transferors were not cited. I accordingly hold that there is nothing substantial in the first objection that the transferor was not cited under s. 232.

The second objection raised is that the deed of assignment in favour of the first assignee was invalid in consequence of its not having been registered at the proper place for registration, and that the assignment by the first assignees to the respondent is consequently null and void: that is to say, although a hut, admittedly a portion of the property comprised in the deed of assignment, was situate at Bareilly, where the deed of assignment was registered, the registration was not one contemplated by s. 28 of the Registration Act, and the learned counsel relies on *Sheo Dayal Mal v. Hari Ram* (1), in which it is held that some portion of the property should be construed to mean "some substantial portion." I doubt whether the judgment-debtor is a party who can raise the objection. It seems to me that that objection is one which should properly be raised between the transferor and transferee. However that may be, I am of opinion that there is nothing in the objection raised. Under s. 28 of the Registration Act it is provided: "Save as in this part otherwise provided, every document mentioned in s. 17, clauses (a), (b), (c) and (d), and s. 18, clauses (a), (b), and (c), shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate." Admittedly some portion of the property was and is still situate at Bareilly. It would cause endless lawsuits if we were to read into the proviso "substantial portion of the property." For who is to decide what is a substantial portion of the property? One Judge may hold it to be  $\frac{1}{3}$ rd, another  $\frac{1}{6}$ th, and so on. I should therefore be very loth

(1) I. L. R., 7 All. 590

to read the section as if it were to mean "some substantial portion." No loss or injury can be caused by the assignee registering at Bareilly and not elsewhere; for we find ss. 64 and 65 of the Registration Act laying down that "every Sub-Registrar, on registering a document relating to immoveable property not wholly situate in his own sub-district, shall make a memorandum thereof and of the endorsement and certificate thereon, and send the same to every other Sub-Registrar subordinate to the same Registrar as himself in whose sub-district any part of such property is situate, and such Sub-Registrar shall file the memorandum in his Book No. I."

"Every Sub-Registrar, on registering a document relating to immoveable property situate in more districts than one, shall also forward a copy thereof and of the endorsement and certificate thereon, together with a copy of the map or plan (if any) mentioned in s. 21, to the Registrar of every district in which any part of such property is situate other than the district in which his own sub-district is situate."

This would clearly prevent any case of fraud arising.

The third objection is, that Hasan Raza Khan's name was not substituted for that of the decree-holder, the argument being that where a decree has been assigned by one assignor to another, the substitution of his name on the record in lieu of that of the original decree-holder is a condition precedent to the assignor's passing title under the assignment. Mr. *Pogose* does not refer us to any section of the Civil Procedure Code which lays this down. The Calcutta case—*Greesh Chunder Sein v. Gudadhur Ghose* (1)—which has been cited does not appear to apply.

Under these circumstances, I am of opinion that this appeal must be dismissed with costs.

OLDFIELD, J.—I concur and agree with the Chief Justice on the several points raised, especially on the question raised under s. 28 of the Registration Act.

*Appeal dismissed.*