

the Court recently, in which the parties agreed that the interest of a bond should be deducted from the rent. The Court of Revenue cannot entertain a set-off in a case in which the assistance of a Civil Court would be required to ascertain a title or to determine whether there had been a contract not relating to the tenancy. No Court can entertain a set-off if it would not have had jurisdiction to entertain a suit if one had been brought to recover the money sought to be set-off. In this case the District Judge rightly determined that the Court of Revenue had no jurisdiction to entertain the set-off claimed. We dismiss the appeal with costs.

*Appeal dismissed.*

## REVISIONAL CIVIL.

*Before Mr. Justice Burkitt.*

J. J. GUISE AND OTHERS (APPLICANTS) v. JAISRAJ AND ANOTHER  
(OPPOSITE PARTIES).\*

*High Court's powers of revision—Practice—Civil Procedure Code ss. 281, 283, 484, 622.*

The High Court will not exercise its revisional jurisdiction so long as there is any other remedy open to the applicant.

Where a Subordinate Judge disallowed an application for the release of certain property which had been attached before judgment: *Held* that there being a remedy by suit under s. 283 of the Code of Civil Procedure, the High Court should not interfere with such order in revision. *Ittiachan v. Velappan* (1), *Sheo Prasad Singh v. Kastura Kuar* (2) and *Gopal Das v. Alaf Khan* (3) referred to.

The facts of this case sufficiently appear from the judgment of the Court.

The Hon'ble Mr. Colvin, Mr. A. H. S. Reid and Pandit Moti Lal, for the applicants.

Mr. T. Conlan, for the opposite parties.

BURKITT, J.—This is an application for revision of an order passed on the 26th of August 1892, by the Subordinate Judge of

\* Miscellaneous, No. 2 of 1893, application for revision under s. 622 of the Code of Civil Procedure.

(1) I. L. R. 8, Mad., 484.

(2) I. L. R. 10, All., 110.

(3) I. L. R. 11, All., 383.

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Azamgarh, by which he refused to release certain property then under attachment. It appears that certain chests of indigo manufactured by Mr. Cooper at the Maharajganj factory in the Azamgarh district had been sent by Mr. Cooper to Messrs. Burn and Co's office at Azamgarh for despatch to Calcutta. While there they were attached by order of the Subordinate Judge before decree by some parties who had instituted a suit against Mr. Cooper. The attachment was made under the provisions of s. 484 of the Code of Civil Procedure. Subsequently the present applicants, who are the firm of Messrs. Gisborne and Co. of Calcutta, put in an objection to the attachment before the Subordinate Judge. Their objection practically amounted to this; that under an arrangement made between them and Mr. Cooper, whose creditors they were for a large amount, the Maharajganj factory and its produce, present and future, had been mortgaged to them. The Subordinate Judge refused to release the property from attachment, chiefly, it would appear, because he held that it had not been in the possession of the applicants and that they had only a lien on it. He refused to adjudicate on the conflicting rights of the parties to the indigo chests or their proceeds. His order was one purporting to be passed under s. 281 of the Code of Civil Procedure, and by it the Subordinate Judge disallowed the application to have the property released from attachment and to have it made over to the applicants. As to this order it is admitted by the learned counsel who appeared for the applicants that the applicants have still left to them a remedy by the suit mentioned in s. 283. For the opposite party Mr. Conlan takes an objection that, in such a case as an order passed under s. 281, this Court will not exercise its revisional powers. In support of that contention he mentioned several authorities. Those to which I would refer are *Ittiachan v. Velappan* (1) in which a Full Bench of the Madras High Court held that they had no power to interfere in revision in the case of an order passed under s. 281 and that the applicants' proper remedy was by suit. Similarly, in the case of *Sheo Prasad Singh v. Kastura Kuar* (2)

(1) I. L. R. 8, Mad., 484.

(2) I. L. R. 10, All., 119 at p. 122

this Court held that the special and extraordinary remedy, by invoking the revisional powers of this Court, should not be exercised unless as a last resource for an aggrieved litigant. Again, in the case of *Gopal Das v. Alaf Khan* (3), Mr. Justice Straight, whose judgment was afterwards affirmed on appeal, is reported to have said:—"The recognised rule of this Court is that if a party to civil proceedings applies to us to exercise our powers under s. 622, he must satisfy us that he has no other remedy open to him under the law to set right that which he says has been illegally, irregularly or without jurisdiction done by a Subordinate Court." These last two cases apply in every way to the case I am now considering. The learned counsel for the applicants admits that they have open to them a remedy by way of suit in which they can question the decision of the Subordinate Judge so far as it is injurious to them. Admittedly they have not availed themselves of that remedy, and therefore, adopting and acting on the precedents above cited, I think that this Court should not grant to them the extraordinary remedy by way of revision for which they have applied. For this reason I think this application should be rejected. It is therefore unnecessary for me to enter into its merits or to come to any finding as to whether the reasons set forth in the application are or are not good grounds for the exercise of the revisional jurisdiction of this Court. I dismiss this application with costs.

*Application dismissed.*

*Before Mr. Justice Burkitt.*

ALI GAUHAR KHAN (APPLICANT) *v.* BANSIDHAR (OPPOSITE PARTY).\*

*Civil Procedure Code, s. 311—Execution of decree—Application to set aside sale in execution—Decree-holder a necessary party to such application.*

The decree-holder is a necessary party to an application under s. 311 of the Code of Civil Procedure.

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\* Miscellaneous application, No. 5 of 1893, for revision under s. 622 of the Code of Civil Procedure.

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