

—the other persons with whom a settlement may be made,—does not arise here. But this doubt is not a matter with which we are concerned.

It may be that Gurdayal being admittedly still alive, the action of the revenue authorities in treating him as if he was dead and in settling the property with his wife, was illegal. But in this case we are dealing with the matter as a Civil Court, and I therefore agree with my brother Oldfield in holding that the question cannot be adjudicated on by us so far as regards the validity of the settlement made by the Collector. By reason of cl. (b) of s. 241 of the Revenue Act, we have no jurisdiction to enter into the merits of the matter, and therefore we must take it that the wife does now represent such rights and interests as Gurdayal possessed, and, in consequence, he is virtually bound by such contracts regarding the property as he made. It is unnecessary for me to remark as to the effect of the circumstance that Gurdayal himself is one of the defendants in the present suit. For these reasons I concur in the order proposed by my brother Oldfield.

Appeal dismissed.

Before Mr. Justice Oldfield and Mr. Justice Mahmood.

RAM BAKHSI (PLAINTIFF) v. PANNA LAL AND ANOTHER (DEFENDANTS)*.

*Execution of decree—Application of transferee of decree for execution disallowed—
Suit by transferee for decretal amount—Declaratory decree—Civil Procedure Code,
ss. 232, 244.*

The transferee of a decree for costs, associating with him the transferor, made an application under s. 232 of the Civil Procedure Code, to be allowed to execute the decree. The application was opposed by the judgment-debtor, and was rejected, and the Court referred the transferee to a regular suit. After taking various proceedings ineffectually, he instituted a suit for the recovery of the sum to which he was entitled as costs under the decree transferred to him.

Held that the plaintiff, as the holder of the decree by assignment, could only recover the amount under it by executing the decree, and not by a separate suit; but that he was entitled to have a decree declaring that the assignment to him of the decree-holder's rights under the decree was valid, and gave him a right to execute it, and that the Court's order under s. 232 which disallowed the execution was an improper one, a suit for this relief being maintainable, for, there being no appeal from orders under s. 232, there would otherwise be no remedy; and that, looking at the plaint and the issues on which the parties were divided, and the

* Second Appeal No. 1682 of 1883, from a decree of Babu Pramoda Charan Banarji, Judge of the Court of Small Causes at Agra, with powers of a Subordinate Judge, dated the 30th June, 1883, reversing a decree of Maulvi Muhammad Fida Husain, Munsif of Agra, dated the 13th December, 1882.

1885

BARI BAHU
v.
GULAB
CHAND.

1885
March 5.

1885

fact that the Court which refused the plaintiff's application for execution, referred him to a regular suit, this relief might properly be given in the present suit.

RAM RAKHSHI
v.
PANNA LAL.

Per MAHMOOD, J., that the suit was maintainable, inasmuch as the present plaintiff never having been accepted on the record as holder of the decree, the questions which were disposed of by the Court executing the decree, as between the plaintiff and the judgment-debtor, could not be regarded as questions within s. 244 of the Civil Procedure Code.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of Oldfield, J.

Mr. T. Conlan and Munshi Kash Prasad, for the appellant.

Pandit Ajudhia Nath and Pandit Bishambar Nath, for the respondents.

OLDFIELD, J.—It appears that the defendants-respondents instituted a suit against Khatta Mal and Kashi Nath on a bond for recovery of money due. They succeeded in the Court of first instance and in the lower appellate Court, but their decree was set aside in appeal by the High Court on the 8th March, 1871, and their suit dismissed, and Khatta Mal and Kashi Nath obtained a decree for their costs. On the 17th March, 1879, Kashi Nath, the sole surviving defendant in that suit, assigned to the plaintiff-appellant before us his right under the decree of the High Court to costs. On the 10th July, 1879, the assignee (*i.e.*, plaintiff-appellant before us) associating with him Kashi Nath, assignor, put in an application to be allowed to execute the decree for costs. This application was made under s. 232, Civil Procedure Code, and was refused by the Court, and it would appear that the judgment-debtor, that is, Panna Lal, defendant-respondent before us, objected to the prayer in the application, and the Court referred the decree-holder to a regular suit. The plaintiff-appellant took various proceedings ineffectually. He appealed to the Judge, but his appeal was dismissed, as no appeal could lie under the provisions of the Civil Procedure Code. He applied to the High Court to revise the order of the Court on his application for execution, but without success.

He then brought a suit in the Court of Small Causes to recover the amount of costs; but it was held that the suit would not lie in that Court. He has now instituted the present suit in the Court of the Munsif of Agra to recover the sum to which he was entitled as costs under the High Court decree assigned to him by Kashi Nath. The Court below has held that he can only recover the amount by

executing the decree, and not by a separate suit. Ram Bakhsh, plaintiff, has appealed against this decree. I am of opinion that the plaintiff, as the holder of the decree by assignment, can only recover the amount under it by executing the decree, and not by a separate suit; and, so far, I concur with the lower Court; but it appears to me that he is entitled to have a decree declaring that the assignment to him by Kashi Nath of his rights under the decree of this Court is a valid assignment, and gives him a right to execute it; and that the Court's order under s. 232, which disallowed the execution, was an improper one. A suit for this relief is certainly maintainable, for there is no appeal from orders under s. 232, Civil Procedure Code; and there would be no remedy if a suit was not allowed; and looking at the plaint and the issues on which the parties were divided, and the fact that the Court, which refused his application for execution, referred him to the Civil Court, this relief may, I think, be properly given in this suit, and there is no question as to the fact that the assignment was made by Kashi Nath in favour of the plaintiff. The decree of the lower appellate Court will be modified accordingly. The plaintiff will pay Kashi Nath's costs in all Courts. The other parties will pay their own cost.

MAHMOOD, J.—I concur in the order proposed by my learned brother Oldfield, and also in the reasons which he has given. I need only add that the reason why this suit is maintainable is, that the present plaintiff never having been accepted on the record as holder of the decree, the questions which were disposed of by the Court executing the decree, as between the plaintiff and the judgment-debtor, cannot be regarded as questions within s. 244 of the Civil Procedure Code. These observations apply to the connected cases also.

APPELLATE CRIMINAL.

Before Mr. Justice Brodhurst.

QUEEN-EMPRESS *v.* SHEO DAYAL.

Act XLV of 1860 (Penal Code), ss. 24, 25, 471—Fraudulently using as genuine a forged document—"Dishonestly"—"Fraudulently."

In a trial upon a charge, under s. 471 of the Penal Code, of fraudulently or dishonestly using as genuine documents known to be forged, it was found that four forged receipts for the payment of rent, used by the prisoner, had been fabricated in lieu of genuine receipts which had been lost.

1885

RAM BAKHSH
v.
PANNA LAL.

1885

March 6.