

in the case. We do not say that it is necessary to write a judgment in the form prescribed by s. 367 of the Code of Criminal Procedure, 1882, or anything like it. We only say that we think it is advisable for those Courts whose orders may be challenged by application in revision to record something which may be a guide for the Court acting in revision.

We dismiss this application.

Application dismissed.

APPELLATE CIVIL.

Before Mr. Justice Blair and Mr. Justice Burkitt.

RATTANJI (DECREE-HOLDER) v. HARI HAR DAT DUBE (JUDGMENT-DEBTOR.)*

Execution of decree—Attachment of immovable property—Order striking off application for execution but maintaining attachment—Appeal.

A decree-holder in execution of his decree applied for the sale of certain immovable property of his judgment-debtor attachment of which had been obtained before judgment; but on objection being made to the sale he took no further steps to complete the execution of the decree, and the Court struck off the execution-proceedings, maintaining the attachment. Against this order the decree-holder appealed. *Held* that, inasmuch as the order in question was not a judicial disposal of the application for sale and would not preclude the decree-holder from continuing the execution of his decree, an appeal from such order was superfluous and must be dismissed.

THE facts of this case are sufficiently stated in the judgment of the Court.

Pandit *Moti Lal Nehru*, for the appellant.

Mr. *T. Conlan*, Mr. *Abdul Majid* and Pandit *Sundar Lal*, for the respondent.

BLAIR and BURKITT, J.J.—In our opinion this appeal is quite unnecessary. On the statement of facts it appears that the predecessor in title of the appellant obtained in May 1890, a money decree against the late Rajah Hari Har Dat Dube. It further appears that under the provisions of s. 483 of the Code of Civil

* First Appeal No. 153 of 1891, from an order of Rai Anant Ram, Subordinate Judge of Jaunpur, dated the 13th June 1891.

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Procedure two houses, the property of the Rajah, were attached before judgment. Afterwards, in execution of the decree, an application was made to the Subordinate Judge in July 1890 asking him to direct the sale of the attached houses. The usual sale notifications were issued, and in September 1890, the wife of the judgment-debtor raised objection to the sale, claiming the houses as her own property. The sale was postponed pending the decision of her objections, and also was stayed by order of the District Judge. Eventually, on June the 3rd, 1891, the Subordinate Judge called on the decree-holder to take some other step in the matter of the execution, and on June the 13th, 1891, as the decree-holder had not taken any such step up to that day, the Subordinate Judge struck off the case, but maintained the attachment. That order is now under appeal. In our opinion that order is nothing more than a temporary adjournment of an adjudication on the original application for sale, and on the objection taken to it. That application is still pending undisposed of, awaiting orders in the Court of the Subordinate Judge. The order striking it off is in no way a judicial disposal of the application. It does not decide whether the decree can or cannot be executed, in whole or in part, by sale of the attached houses. It contains no order unfavorable to the decree-holder's right to execute the decree, or which in any way prevents the decree-holder from asking the Subordinate Judge now to take up again and dispose judicially of the application made on July the 19th, 1890. Execution by sale of the attached houses has up to the present not been refused by the Subordinate Judge. Indeed, so far as the proceedings have gone, they are in favor of the decree-holder's rights, seeing that a notification for sale was issued, though the sale was subsequently postponed. The application for execution in the way specified in that application has so far simply been shelved undisposed of. Under such circumstances we think there is nothing to appeal against. No order, as the law has been understood since the case of *Dhonkal Singh v. Phakkar Singh* (1) and Act No. VI of 1892 has been passed which in any way damnifies the

(1) I. L. R., 15 All., 84.

decree-holder. All he has to do is to ask the Subordinate Judge to go on with the proceedings which had been temporarily laid aside in June 1891. When that request is made to the Subordinate Judge it will be for him to consider who is the person against whom, and what the manner in which, execution-proceedings are to be continued, and as to that matter his attention is called to s. 234 of the Code of Civil Procedure and to the case of *Hirachand Harjivandas v. Kasturchand Kasidas*, (1). It is quite unnecessary and would be premature for us now to enter into the question as to who is the legal representative of the deceased judgment-debtor. As to that matter we express no opinion upon, and draw no inference from, the finding submitted by the Subordinate Judge on the issue remitted for trial by this Court as to whether Rajah Shankar Dat Dube was or was not the legal representative, within the meaning of s. 234, of the deceased judgment-debtor, Rajah Hari Har Dat Dube. As we consider this appeal to have been unnecessarily brought we dismiss it with costs.

Appeal dismissed.

Before Mr. Justice Blair and Mr. Justice Burkitt.

SHANKAR DAT DUBE (OBJECTOR) v. J. G. HARMAN & Co. (DECREE-HOLDERS).*

Civil Procedure Code, ss. 234, 244, 278, 283—Execution of decree—Representative of deceased judgment-debtor—Practice—Appeal.

Certain decree-holders obtained during the lifetime of their judgment-debtor attachment of certain immovable property as belonging to the said judgment-debtor; but on the decree-holders' seeking to bring the property to sale one S. D. came forward with an objection that the property was his and was not liable to sale in execution of the decree in question. Pending the decision of the Court on this objection the decree-holders applied to the Court to have the names of S. D. and the widow of the judgment-debtor (who died about the time the previous objection was filed) placed on the record as representatives of the judgment-debtor. S. D. filed a similar objection to this application also; but both objections being heard together on the 6th September 1892 were dismissed, and S. D. was placed on the

* First Appeal No. 288 of 1892, from an order of Kunwar Bharat Singh, District Judge of Jaunpur, dated the 6th September 1892.

(1) I. L. R., 18 Bom., 224.

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