

1895.  
July 29.

Before Mr. Justice Banerji.

MUKARRAB HUSAIN AND ANOTHER (OBJECTORS) v. HUMMAT-UN-NISSA  
(DECREE-HOLDER).\*

*Execution of decree—Civil Procedure Code, sections 244, 278—Party to the suit in which a decree was passed.*

*Held* that persons who had originally been made parties to a suit, but had been expressly exempted from the operation of the decree, were not "parties to the suit" within the meaning of section 244 of the Code of Civil Procedure with regard to objections taken by them in respect of the attachment of their property by the decree holder; but that such objection must be considered to be an objection under section 278 of the Code. *Jangi Nath v. Phundo* (1) referred to.

THE facts of this case are sufficiently stated in the judgment of Banerji, J.

Munshi *Madho Prasad*, for the appellants.

Pandit *Sundar Lal*, for the respondent.

BANERJI, J.—The preliminary objection that no appeal lies in this case must prevail. The facts are these:—The respondent brought a suit for dower against Syed Ashraf Ali. Ashraf Ali, it is alleged, had made a gift of some property in favour of the present appellants, and the present appellants were made parties to that suit. As against them the plaintiff's prayer was that the gift should be set aside. That prayer was disallowed on the ground that, as there was no claim against any property of Ashraf Ali, but the claim for dower was only a personal claim against him, the plaintiff had no cause of action against the present appellants. The decree was made only against Ashraf Ali. In execution of that decree the decree-holder, respondent, caused certain property to be attached as the property of Ashraf Ali. In respect of that property the present appellants filed objections disputing the decree-holder's right to bring that property to sale and claiming it as their own under the gift referred to above. The Court below has disallowed the appellants' objections. If the appellants can be regarded as parties to the suit within the meaning of cl. (c) of section 244 of the Code of Civil Procedure, an appeal, no doubt, lies; but if on the other hand they are to be treated as strangers, their objection

\* First Appeal No. 64 of 1895, from an order of Lala Brij Pal Das, Subordinate Judge of Allahabad, dated the 26th January 1895.

to, the attachment of the property in question was an objection under section 278 of the Code of Civil Procedure, and their only remedy was a suit under section 283, and they have no right of appeal.

I am of opinion that the appellants cannot be held to be parties to the suit within the meaning of clause (c) of section 244. They were no doubt originally made parties, but they were released from liability for the decree. There is no decree as against them, and consequently no question as between them and the decree-holder relating to the execution of the decree. They are not parties to the execution proceedings, and indeed there is no decretal order in respect of which the decree-holder by execution could claim any relief as against them. So far, therefore, as the property now sought to be attached is concerned, they are in the position of strangers and not of parties to the suit, and the question which arose between them and the decree-holder was not a question within section 244, cl. (c). This view is supported by the ruling in *Jangi Nath v. Phundo* (1), the principle of which applies to this case. In fact this is a much stronger case than that of *Jangi Nath v. Phundo*. As no appeal lay, this appeal is dismissed with costs.

*Appeal dismissed.*

*Before Mr. Justice Blair and Mr. Justice Aikman.*

ABBASI BEGAM (DEFENDANT) v. IMDADI JAN (PLAINTIFF).\*

*Civil Procedure Code, section 32—Removal of name of defendant from record—Such order not to be made after first hearing.*

An order striking the name of a defendant off the record of a suit cannot be made under s. 32 of the Code of Civil Procedure at a period subsequent to the first hearing of the suit.

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

Maulvi Ghulam Mujtaba, for the appellant.

Mr. Abdul Raof, for the respondent.

BLAIR and AIKMAN, JJ.—This is an appeal from an order striking off the name of the defendant. The suit was instituted

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\*First Appeal No. 53 of 1895, from an order of Pandit Raj Nath Sahib, Subordinate Judge of Moradabad, dated the 10th May 1895.

(1) I. L. R., 11, All., 47.