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Hindu point of view, there being no near kinsmen, and but the plaintiffs, who were doubtful reversioners, that Debi Din should make such a will, the effect of which would be to secure his property to his own descendants, though in the female line, and to secure it, as he probably hoped, without any objections being raised by questionable reversioners. The wisdom of his making a will is apparent from the present suit; for here are people coming forward to claim as reversioners as to whose position as reversioners there may be some doubt. In our opinion Debi Din intended to confer upon his wife after his death an estate larger than, and possessing incidents different from those appertaining to, the estate which Lachminia would have taken as his widow if Debi Din had died intestate. We hold that he did confer upon her an estate which was more extensive than that which she would have had simply as a Hindu widow, and consequently that the estate conferred upon her became her *stridhan*, and that the plaintiffs, whether they are Debi Din's reversioners or not, have no title. We allow the appeal, and set aside the decree below and the order of remand, and restore and affirm the decree of the first Court with costs.

Appeal decreed.

Before Sir John Edge, Kt., Chief Justice and Mr. Justice Blair.

BHAGWATI PRASAD (DECREE-HOLDER) v. JAMNA PRASAD
(RESPONDENT).*

Civil Procedure Code, section 583—Execution of decree—Restitution of an advantage obtained by virtue of a decree subsequently reversed on appeal.

The holder of a decree of the High Court for costs assigned his rights under that decree. The assignee caused his name to be brought on to the record as transferee in place of the decree-holder, and he, and after him his legal representative, executed the decree against the judgment-debtor. The decree was appealed to the Privy Council, but the assignee was not a party to the record in that Court. The Privy Council reversed the decree. Thereupon the successful plaintiff applied under section 583 of the Code of Civil Procedure to obtain restitution from the representative of the assignee of the amount realized in exequ-

* First Appeal No. 236 of 1895, from an order of Pandit Raj Indar Narain, Subordinate Judge of Gorakhpur, dated the 16th November 1895.

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tion of the decree of the High Court. *Held* that, whether or no the amount realized by the assignee was recoverable by suit, it was not recoverable by proceedings under section 583 of the Code, inasmuch as the assignee was no party to the decree of the Privy Council.

THIS was an appeal from an order made upon an application under section 583 of the Code of Civil Procedure. The facts of the case are as follows:—One Bhagwati Prasad brought a suit on a mortgage against Bir Bhaddar. His suit was decreed by the Court of first instance (Subordinate Judge of Gorakhpur) on the 9th of September 1885. Bir Bhaddar appealed to the High Court, which, on the 3rd of June 1887, decreed the appeal and dismissed the plaintiff's suit with costs. The plaintiff then, on the 2nd of December 1887, applied for leave to appeal to Her Majesty in Council. On the 24th of December 1887, Bir Bhaddar, the successful appellant in the High Court, assigned to one Madho Ram the decree which he had obtained from the High Court. Madho Ram had his name entered upon the record of the executing Court as assignee of the decree, and he, and after him his son and legal representative, Jamna Prasad, executed the decree against Bhagwati Prasad. Neither Madho Ram, however, nor Jamna Prasad, was made a party to the record of the appeal in the Privy Council. On the 16th of March 1893, the appeal of Bhagwati Prasad to the Privy Council was decided in his favour. Subsequently Bhagwati Prasad applied to the Court of the Subordinate Judge of Gorakhpur under section 583 of the Code of Civil Procedure to recover from Jamna Prasad, in execution of the decree of the Privy Council, the costs which Madho Ram and Jamna Prasad had realized from him in execution of the decree of the High Court. Jamna Prasad objected that, inasmuch neither he nor Madho Ram had been parties to the decree of the Privy Council, that decree could not be executed against them. This objection was allowed and the decree-holder's application dismissed. The decree-holder thereupon appealed to the High Court.

Messrs. *T. Conlan* and *W. K. Porter*, and *Munshi Madho Prasad*, for the appellant.

Mr. G. E. Foy and *Pandit Sundar Lal*, for the respondent.

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BRAGWATI
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EDGE, C.J. and BLAIR, J.—In his appeal in this Court one Bir Bhaddar obtained a decree reversing the decree of the Subordinate Judge of Gorakhpur with costs. Bir Bhaddar was a defendant in the suit. The plaintiff appealed to Her Majesty in Council making Bir Bhaddar the respondent to his appeal. Her Majesty in Council set aside the decree of this Court and restored with costs the decree of the Subordinate Judge of Gorakhpur. Now on the 2nd of December 1887, the plaintiff in the suit presented his application to this Court for a certificate under section 599 of the Code of Civil Procedure. The certificate was granted in January 1888. On the 24th of December 1887, Bir Bhaddar had assigned the decree for costs which he had obtained in this Court to Madho Ram. The appeal to the Privy Council was admitted on the 25th of July 1888. The order of Her Majesty in Council was dated the 15th of March 1893. The plaintiff in the suit had notice long before the termination of the appeal to Her Majesty in Council that Madho Ram was the assignee of Bir Bhaddar's decree for costs, and, long before the determination of the appeal to Her Majesty in Council, Madho Ram in his life-time, and subsequently Jamna Prasad, the appellant here, as Madho Ram's representative, executed, under section 232 of the Code of Civil Procedure, the decree of the High Court for costs against the plaintiff and obtained satisfaction of that decree. The plaintiff took no steps to bring either Madho Ram, or, after his death, his representative Jamna Prasad, on the record of the appeal to Her Majesty in Council. The plaintiff now seeks under section 583 of the Code of Civil Procedure to obtain restitution from Jamna Prasad of the costs which he paid under the decree of the High Court to Madho Ram and Jamna Prasad.

Assuming for the present purposes, but not deciding, that section 583 of the Code of Civil Procedure would apply to a decree passed in an appeal to Her Majesty in Council, we are of opinion that the plaintiff in the suit cannot have execution of the decree of Her Majesty in Council against Jamna Prasad personally or against him as representative of Madho Ram. Neither Madho

Ram nor Jamna Prasad was made a party to the appeal before Her Majesty in Council; and it appears to us that, as neither of them was a party to that appeal, and as Her Majesty in Council did not order that Jamna Prasad personally or as representative of Madho Ram should make restitution, the order of Her Majesty could not be executed so far as Jamna Prasad is concerned.

No case has been brought to our attention in which a decree was held to have been executable under section 583 for restitution against a person who could have been made, but was not made, a party to the appeal in which the decree was passed. We have been referred to the decision of this Court in *Kishen Sahai v. The Collector of Allahabad* (1). It appears to us that that case was not in point. In that case the order of Her Majesty in Council set aside the decree of the Sadr Court and restored and affirmed the decree of the District Judge, although one Banke Lal, who had derived a material advantage as a litigant in the suit from the decree of the Sadr Court, was not a party to the appeal to Her Majesty in Council. It does not appear whether or not their Lordships of the Privy Council when they delivered their judgment advising Her Majesty to set aside the decree of the Sadr Court and to restore and affirm the decree of the District Judge were aware that in so doing they were advising that the decree which Banke Lal had obtained from the Sadr Court should be taken away from him, although he was not a party to the appeal to Her Majesty in Council. All that can be said about that case is that Her Majesty in Council having set aside the decree of the Sadr Court, reinstated and affirmed the decree of the District Judge, and under that decree Banke Lal as a party to it was liable.

This Court has, we believe, invariably declined in appeal adversely to alter the position of a decree-holder who has not been a party to the decree before it. We think it would be dangerous to depart from that principle. We dismiss the appeal with costs in this Court and affirm the order of the Court below.

Appeal dismissed.

(1) L. L. R., 4 All., 137.

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