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KAUNSILIA
v.
CHANDAR
SEN.

We therefore allow the appeal, set aside the judgment of the lower appellate Court and restore that of the Court of first instance, dismissing the claim with costs in all Courts.*

Appeal decreed.

1900
June 7.

Before Mr. Justice Burditt and Mr. Justice Henderson.

MOTI RAM AND ANOTHER (DEFENDANTS) v. KUNDAN LAL AND OTHERS
(PLAINTIFFS).*

Civil Procedure Code, sections 372, 588—Assignment pending suit—Application by Assignees to be allowed to appeal against the decree—Order rejecting application—Appeal.

A defendant, pending the suit, made an assignment of his interest therein. No application was made by the assignees or the assignor to have the assignees brought on the record, and the suit was decided *ex parte* to the detriment of the assignees. The assignees filed a memorandum of appeal claiming that they were entitled to file an appeal under the circumstances set forth in their memorandum. The Court, apparently treating this memorandum as an application under section 372 of the Code of Civil Procedure, dismissed it. *Held* that an appeal would lie from this order of dismissal as from a decree. *Inda Mati v. Gaya Prasad* (1) followed.

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

Pandit *Moti Lal* and Babu *Durga Charan Banerji*, for the appellants.

Babu *Jogindro Nath Chaudhri* (for whom *Munshi Gulzari Lal*) for the respondent.

BURKITT and HENDERSON, JJ.—This is an appeal from a decree of the District Judge of Meerut, which in words directs the appeal before him to be dismissed. The case was one in which in a pending suit the present appellants purchased the interest of one Dalip; they made this purchase on the 5th July 1897. No application was made by the assignees or assignor to have the assignees brought on the record, and the suit was decided *ex parte* on the 13th July. The decree given in that suit was injurious to the present appellants, in that it debarred them from redeeming the mortgage. Thereupon the present appellants put in a memorandum of appeal before the Judge, and in that

* Second Appeal No. 966 of 1897 from a decree of H. G. Pearse, Esq., District Judge of Meerut, dated 13th September 1897, confirming a decree of Babu Jai Lal, Officiating Subordinate Judge of Meerut, dated the 13th July 1897.

(1) (1896) I. L. R., 19 All., 142.

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memorandum claimed distinctly that they were entitled to file an appeal under the circumstances set forth in their memorandum. This application was supported by the assignor who disclaimed all interest in the subject of the suit. The District Judge treated the application for leave to appeal as if it were an application properly made under section 372 of the Code of Civil Procedure, and adopted the procedure prescribed by that section. Eventually the District Judge in his final order, after setting forth the facts, records that these appellants applied to be allowed to appeal under no section whatever. And because they had taken no steps to have their names entered (apparently before decree was passed) the learned Judge held "they have no *locus standi* now." Having come to this conclusion the District Judge dismissed the appeal. This order is evidently a clerical blunder, and what the learned Judge meant no doubt was that the application for leave to appeal was rejected.

In our opinion the District Judge was wrong in refusing the application. Section 372 clearly does apply to such a case. The assignment here was an assignment which took place pending the suit, in the sense in which the word suit has been interpreted in many cases in the Privy Council. There was a suit pending when the assignment took place, and that being so, we think section 372 is applicable, even though no application to have the assignees brought on the record was made till after the decree.

It is then contended that no appeal lies. Clearly section 588 does not give an appeal, as the appeal given by that section is an appeal against an order disallowing objections raised under section 372. Here objections were raised and they were allowed; consequently sub-section 21 does not apply. But it was held in the case of *Indo Mati v. Gaya Prasad* (1) in which an application to be brought on the record under section 372 had been refused, that the order rejecting the application was an adjudication on the representative right claimed by the applicant, and therefore amounted to a decree as that word is defined in section 2 of the Code. Applying that case, it appears to us that an appeal does lie to us, and we are of opinion that that appeal should be allowed. The facts are perfectly clear. There can be no doubt that the

(1) (1896) I. L. R., 19 All., 142.

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assignment did take place, and, as we held above, the application to have the assignees brought on the record was made, and properly made, under section 372 of the Code.

We therefore set aside that which we conceive to be the order of the Court below, i.e. the dismissal of the appellants' application to be brought on the record. We direct that the appellants be now brought on the record, and we remand the record to the Court of the District Judge with orders to decide whether the memorandum of appeal dated the 23rd August 1897, should or should not be admitted; and if admitted, to hear and decide the appeal according to law. Costs of this appeal will follow the event.

Appeal decreed.

1900
 June 12.

Before Mr. Justice Burkitt and Mr. Justice Henderson.

CHHIDDU SINGH AND OTHERS (PLAINTIFFS) v. DURGA DEI AND OTHERS
 (DEFENDANTS).*

Hindu law—Hindu widow—Reversioners entitled to succeed successively on death of Hindu widow—Suit by some of such reversioners to set aside alienations made by widow in possession—Res judicata.

Where there are several reversioners successively entitled to succeed to property for the time being in the possession of a Hindu female, a decree in a suit by some of such reversioners seeking to set aside alienations made by the female in possession will not necessarily constitute *res judicata* in respect of a similar suit brought by other reversioners. *Bhaguanta v. Sukhi* (1) *Jumoona Dassya Chowdhri v. Bamasoondrai Dassya Chowdhri* (2) and *Isri Dui Koer v. Mussamat Hansutti Koerain* (3) referred to.

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

Babu *Jogindro Nath Chaudhri* (for whom Babu *Satish Chandar Banerji*) for the appellants.

Pandit *Sundar Lal* (for whom Pandit *Baldeo Ram Dave*) for the respondents.

HENDERSON, J. (BURKITT, J., concurring).—In this case the plaintiffs, who were the nephews of one Balu Singh, sued the defendants to recover possession of certain property which

* Second Appeal No. 912 of 1897, from a decree of D. F. Addis, Esq., District Judge of Shahjahanpur, dated the 8th September 1897, reversing a decree of Rai Banwari Lal, Subordinate Judge of Shahjahanpur, dated the 27th August 1894.

(1) (1899) I. L. R., 22 All., 33.

(2) (1876) L. R., 3 I. A., 72.

(3) (1833) L. R., 10 I. A., 150.