

give any cause of action to the appellants against Sadiq Husain? The order of Her late Majesty in Connoil gave the appellants a decree against Hafiz-ud-din and Aziz-ud-din for the costs incurred by them in all three Courts. We cannot understand why, having that decree in their hands, the appellants prefer to proceed against Sadiq Husen for a considerable portion of those costs instead of against Hafiz-ud-din and Aziz-ud-din. The appellant's decree is against the latter and not against Sadiq Husen, and that decree gives them a right to recover from Hafiz-ud-din and Aziz-ud-din the very sum which they now seek to recover from Sadiq Husen.

In our opinion the appellants have not shown any tangible cause of action against the respondent. We therefore dismiss this appeal with costs.

*Appeal dismissed.*

*Before Mr. Justice Banerji and Mr. Justice Aikman.*

COLLECTOR OF JAUNPUR (PETITIONER) v. BITHAL DAS AND ANOTHER  
(OPPOSITE PARTY).\*

*Civil Procedure Code, section 244—Execution of decree—Question relating to the execution, discharge or satisfaction of the decree—Application to recover proceeds of sale from decree-holder after sale has been set aside.*

*Held* that an application to recover from a decree-holder the proceeds of a sale in execution, such sale having been set aside, is an application which falls within section 244 of the Code of Civil Procedure.

Section 244 of the Code of Civil Procedure applies as well to a dispute arising between the parties after the decree has been executed as it does to a dispute arising between them previous to execution.

*Insad Ali v. Jagan Lal* (1), *Dhan Kunwar v. Maktab Singh* (2) and *Partab Singh v. Beni Ram* (3) referred to. *Ramoharbar Misar v. Bachu Bhagat* (4) distinguished.

THE facts out of which this appeal arose were as follows:—

On the 21st of July, 1890, Bithal Das and Girdhar Das obtained a decree against Raja Harihar Dat Dube in the Court of the Subordinate Judge of Benares. The decree was sent for execution to the Court of the District Judge of Jaunpur and an eight-anna

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\* First Appeal No. 292 of 1900, from a decree of Syed Muhammad Ali, District Judge of Jaunpur, dated the 25th September 1900.

(1) (1895) I. L. R., 17 All., 478.

(3) (1878) I. L. R., 2 All., 61.

(2) (1899) I. L. R., 22 All., 79.

(4) (1885) I. L. R., 7 All., 641.

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share in Mauza Dilshadpur was attached. The judgment-debtor's brother Raja Shankar Dat Dube filed an objection under section 278 of the Code of Civil Procedure, but before that objection was decided the judgment-debtor died and was succeeded by the objector. The objector subsequently filed another objection under section 244 of the Code. This objection, as well as the objection under section 278, was decided against him on the 6th of September, 1892. Against the order disallowing the objection under section 244 an appeal was preferred, and, on the 5th of February, 1895, the High Court allowed the appeal and remanded the case under section 562 of the Code of Civil Procedure. In the result the objection of Raja Shankar Dat Dube prevailed, and by his order of the 25th of September, 1897, the District Judge declared that the property in question was not liable to sale. Meanwhile, however, the property had, on the 20th of March 1893, been actually sold and had been purchased by Munni Ram Darogha for Rs. 3,389, and the purchase money had been paid to the decree-holders Bithal Das and Girdhar Das.

In the present case the Collector of Jaunpur as Manager of the estate of Raja Sri Kishan Dat Dube, the successor in title of Raja Shankar Dat Dube, applied under section 244 of the Code of Civil Procedure to obtain a refund of the money paid to Bithal Das and Girdhar Das with interest.

The District Judge of Jaunpur dismissed the application, holding, first, that questions arising subsequent to sale could not be dealt with under section 244 of the Code, and secondly, that an application under section 244 could not be entertained unless execution proceedings were pending in the Court to which it was made.

From this dismissal the applicant appealed to the High Court.

Mr. *A. E. Ryves*, for the appellant.

Pandit *Sundar Lal* and Pandit *Mudan Mohan Malaviya*, for the respondents.

BANERJI and AIKMAN, JJ.—The sole question which arises in this appeal is whether the application of the appellant was one under section 244 of the Code of Civil Procedure, and should have been adjudicated upon by the Court below under that section.

The respondents obtained a simple decree for money against one Raja Hari Har Dat Dube, and in execution thereof caused certain property to be attached as the property of the Raja. Hari Har Dat Dube died during the pendency of execution proceedings, and his brother, Raja Shankar Dat Dube, whose estate is now represented by the appellant, was brought on the record as his legal representative. On the 4th of April, 1892, he preferred an objection respecting the application for the sale of the attached property, on the ground that the property sought to be sold belonged to him, and did not form a part of the assets left by Raja Hari Har Dat Dube. That objection was disallowed by the Court below on the 6th of September, 1892. On the 20th of March, 1893, the property was sold by auction and the proceeds of the sale were taken out of Court by the respondents on the 28th of September, 1893. Meanwhile Shankar Dat appealed to this Court against the order disallowing his objection, and it was during the pendency of this appeal that the property was sold. This Court, on the 5th of February 1895, set aside the order of the Court below, and remanded the case to that Court under section 562 of the Code of Civil Procedure. In the result the Court of first instance, on the 25th of September, 1897, upheld the objection of Shankar Dat, and ordered that the property in question should be released from attachment, declaring that it was incapable of being attached in execution of the decree. The present application was made for the refund of the sale proceeds, which the respondents withdrew from Court on the 29th of September, 1893.

The Court below has refused the application on the ground that it is not one to which section 244 of the Code of Civil Procedure relates. We are unable to agree with that view. The learned Judge was of opinion that the property having been sold and the decree having been satisfied no question relating to the execution, discharge or satisfaction of the decree could arise, and in support of his view he referred to the ruling of this Court in *Ramchhaibar Misr v. Bechu Bhagat* (1). That case, if carefully looked into, does not support the learned Judge's view. What was really decided in that case was, that after a sale any question which arose between the auction-purchaser and

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judgment-debtor was not a question relating to the execution of the decree. The judgment in that case must be considered with reference to the facts which the Court had to deal with. We have a number of authorities of later date in which it was held that a question of the nature of that which arises in this case is one relating to the execution, discharge or satisfaction of a decree, although it arises after a sale has taken place under the decree; in other words, section 244 applies as well to a dispute arising between the parties after the decree has been executed, as it does to a dispute arising between them previous to execution. We need only refer to *Imdad Ali v. Jagan Lal* (1), and *Dhan Kuar v. Mahtab Singh* (2). The principle of the Full Bench ruling in *Partab Singh v. Beni Ram* (3), is also applicable. The mere fact that no execution case was pending before the Court below at the time when the appellant filed his application on the 27th of August, 1900, would not render section 244 inapplicable. The result is that we allow this appeal, set aside the order of the Court below, and remand the case to that Court under section 562 of the Code of Civil Procedure, for disposal on the merits. The appellant will have his costs of this appeal. Other costs will follow the result.

*Appeal decreed and cause remanded.*

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*Before Mr. Justice Know and Mr. Justice Blair.*

IQBAL HUSEN AND OTHERS (DEFENDANTS) v. NAND KISHORE AND OTHERS (PLAINTIFFS).\*

*Evidence—Possession—Presumption—Evidence of possession of certain specific property treated as evidence of possession as regards an appendage to such property, though no definite acts of possession were proved as regards the appendage—Limitation.*

Where, on the right to the produce of certain trees being called in question, it was found that the plaintiffs had not for twelve years previous to the filing of the suit done any specific acts indicating directly their possession of the trees, but that the trees nevertheless grew out of a wall which surrounded a garden in possession of the plaintiffs, it was held that the possession of the garden imported possession of the garden wall and of the trees springing out

\* Appeal No. 32 of 1901 under section 10 of the Letters Patent.

(1) (1895) I. L. R., 17 All., 78. (2) (1899) I. L. R., 22 All., 79.

(3) (1878) I. L. R., 2 All., 61.