

1902

SHEORAJ  
SINGH  
v.  
KAMESHAR  
NATH.

On this ground his appeal fails. It is unnecessary for us to determine the other questions which have been discussed in the course of the arguments.

The appeal is accordingly dismissed with costs.

*Appeal dismissed.*

1902  
February 15.

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burkitt.*

LALTA PRASAD AND ANOTHER (PLAINTIFFS) v. SADIQ HUSEN  
(DEFENDANT).\*

*Cause of action—Assignment of decree for costs—Costs realized by assignee—Decree reversed in appeal—Suit by successful appellants to recover from the assignee the costs realized by him.*

Certain appellants in the High Court obtained from that Court a decree dismissing the respondents' plaintiffs' suit with costs. That decree for costs was assigned by the decree-holders, and the assignee took out of Court in execution thereof the money which had been paid in satisfaction of it by the judgment-debtors. Subsequently that decree was reversed by the Privy Council, and the plaintiffs obtained a decree in their favour with costs in all Courts. After an infructuous attempt to get a portion of those costs from the assignee by way of execution of the order of the Privy Council, the decree-holders filed a separate suit against him for their recovery. *Held*, that the decree-holders had no cause of action for a suit to recover from the assignee the costs realized by him in the manner above described.

THE facts of this case will be found stated in the report of the case of *Sadiq Husain v. Lalta Prasad* (1), but briefly they were as follows:—

On the 21st of July, 1888, Lalta Prasad and Har Prasad obtained a decree for sale on a mortgage from the Court of the Subordinate Judge of Bareilly against Aziz-ud-din Ahmad and Hafiz-ud-din Ahmad. The defendants appealed, and on the 16th of March, 1891, the High Court set aside that decree, and dismissed the plaintiffs' suit with costs.

This decree for costs the defendants assigned to one Sadiq Husen, who applied for execution thereof, and realized the amount of costs decreed.

The plaintiffs appealed from the decree of the High Court to the Privy Council, and on the 5th of April, 1895, the Privy

\* First Appeal No. 61 of 1899, from a decree of Babu Madho Das, Subordinate Judge of Bareilly, dated the 3rd February 1899.

(1) (1897) I. L. R., 20 All., 139; S. C., W. N. 1897, p. 222.

Council decreed the appeal and restored the decree of the Court of first instance in favour of the plaintiffs.

The plaintiffs did not make Sadiq Husen a party to their appeal to Privy Council. Having obtained their decree, however, the plaintiffs attempted to execute it as regards the costs realized by virtue of the assignment to him of the decree of the High Court against Sadiq Husen. In this attempt they were unsuccessful, and they next filed a separate suit against Sadiq Husen for the recovery of those costs with interest. The Court of first instance (Subordinate Judge of Bareilly) dismissed the suit, and the plaintiffs thereupon appealed to the High Court.

Mr. *D. N. Banerji*, for the appellants.

Mr. *A. E. Ryves* and Maulvi *Ghulam Mujtaba*, for the respondent.

STANLEY, C.J. and BURKITT, J.—This is an appeal against the decree of the Subordinate Judge of Bareilly dismissing plaintiffs' suit with costs.

It is unnecessary that we should set out the facts of this case at length; they will be found fully detailed in the reported case of *Sadiq Husain v. Lalta Prasad* (1) of which this case is a sequel.

Suffice it to say that in that case the present appellants failed in their attempt to have execution of the decree of Her late Majesty in Council against Sadiq Husen, the respondent here. It was in that case held by a Bench of this Court, of which one of us was a member, that as Sadiq Husen was no party to the decree made by Her late Majesty in Council, that decree could not be executed against him. Being thus foiled in their attempt to proceed against the respondent by way of execution, the appellants have had recourse to this regular suit, by which they seek to recover from him Rs. 4,820-13, the amount of the costs in the Court of the Subordinate Judge in the suit of 1888, which they paid into Court in July, 1891, when the original decree of the first Court was reversed by this Court on March 16th, 1891, and they were ordered to pay that sum as their appellants' costs, and it was paid to the respondent Sadiq Husen pursuant to an assignment to him from the successful defendants-appellants

1902

---

 LALTA  
 PRASAD  
 v.  
 SADIQ  
 HUSEN.

(1) (1897) I. L. R., 20 All., 139.

1902

---

LALTA  
PRASAD  
v.  
SADIQ  
HUSEN.

Aziz-ud-din and Hafiz-ud-din. The plaintiffs here further ask for Rs. 4,068-11-6 interest by way of damages on the Rs. 4,820-13.

In our opinion the decree of the lower Court dismissing the suit is right. The appellants appear to us to be on the horns of a dilemma. If they sue the plaintiff as a party to the litigation, which ended with Her late Majesty's order in Council, the answer is complete and is twofold, namely, firstly, that in that case their suit is barred by the provisions of section 244 of the Code; and, secondly, that it is barred as a *res judicata* by the decree in the reported case mentioned above. If, on the other hand, they sue defendant as a stranger to that litigation, it is difficult to see what cause of action they have against him. The appellants seem to have perceived this difficulty, for all they say is that "they are entitled under the law and equity to recover." We fail to see what are the facts on which the appellants can found their cause of action. What happened is, that the respondent Sadiq Husen purchased for consideration (as found by the learned Subordinate Judge in this case) the right to receive from the Court a sum of money, being the costs due from appellants to Aziz-ud-din and Hafiz-ud-din, and he received those costs in cash from the present appellants through the Court in due process of execution. Now if Aziz-ud-din and Hafiz-ud-din, instead of assigning to Sadiq Husen before execution, had themselves executed the decree for costs, and on receipt of the money had handed it over to respondent there and then, would the appellants here have had any cause of action against Sadiq Husen when the decree, in execution of which those costs had been paid, was subsequently reversed? We think not, and we cannot see what difference it makes that Sadiq Husen, acting under the assignment of those costs to him, asked the Court to pay them to him; for we must assume that Sadiq Husen did not thereby become a party to the suit or a representative of a party. As the learned Subordinate Judge finds that consideration passed for the assignment, it may well be that Hafiz-ud-din and Aziz-ud-din were in debt to Sadiq Husen, and discharged the debt by the payment made to Sadiq Husen through the Court, on the authority conveyed by their assignment. But how does that

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.*

*Hold* 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

1902

LALTA  
PRASAD  
v.  
SADIQ  
HUSEN.

1902

February 17.

\* 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.