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saleable in execution of a decree which, so far as the evidence before the Court goes, may be a perfectly valid and binding decree. The plaintiff was bound to satisfy the Court that he had an interest in the property, and that by not making him a party to the suit for sale the defendant had failed to comply with section 85 of the Transfer of Property Act.

We think that the learned Subordinate Judge was quite correct in the view which he took, and we must affirm his judgment and dismiss the appeal with costs.

Appeal dismissed.

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December 5,

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

WAZIR-UN-NISSA (PLAINTIFF) v. ILAHI BAKHSH AND

OTHERS (DEPENDANTS).*

Letters Patent, section 8—Appeal—Presentation of appeal by a person other than an advocate, vakil or attorney of the Court, or a suitor—Presentation by agent of a pardah-nashin woman—Civil Procedure Code, sections 640, 404, 592.

Where an appeal *in forma pauperis* by a pardah-nashin woman, who had sued as a pauper in the Court of first instance, was presented, not by an advocate, vakil or attorney of the Court, nor by the appellant in person, but by her duly authorized agent, it was held that this was a good presentation, section 8 of the Letters Patent notwithstanding. *Shiam Karan v. Raghunandan Prasad* (1) distinguished.

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

Pandit *Sundar Lal*, for the appellant.

Pandit *Moti Lal Nehru* (for whom Pandit *Mohan Lal Nehru*), for the respondent.

STANLEY, C. J., and BURKITT, J.—This is an appeal from a decree of the Subordinate Judge of Dehra Dun in a pauper suit, by which he declared the plaintiff entitled to a one-seventh share of her father's estate. In her claim the plaintiff asked for a decree for possession of one-seventh of her father's property, but the learned Judge only gave her a declaratory decree. A preliminary objection has been raised to the hearing of this appeal, on the ground that no proper memorandum of appeal

* First Appeal No 291 of 1898 from a decree of L. Stuart, Esq., Subordinate Judge of Dehra Dun, dated the 20th June 1898.

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is before the Court, inasmuch as the application under section 592 of the Code of Civil Procedure was not made by the plaintiff in person, nor by an advocate, vakil or attorney of this Court, and reliance is placed upon the decision of this Court in the case of *Shiam Karan v. Raghunandan Prasad* (1), in which it was held that the presentation of an appeal by a person who is not an advocate, vakil or attorney of the Court, nor a suitor, is not a valid presentation in law, having regard to section 8 of the Letters Patent of the High Court. In this case the plaintiff is a *pardah-nashin* lady, and under section 404 of the Code of Civil Procedure, it is provided that, notwithstanding anything contained in section 36, an application to sue *in forma pauperis* is to be presented to the Court by the applicant in person, unless he is exempted from appearing in Court under section 640 or section 641. Admittedly here the plaintiff is entitled to the exemption contained in section 640 as a *pardah-nashin* lady. In such a case, therefore, under section 404, she may present an application by a duly authorized agent, who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person. It is admitted here that the petition was presented by a duly authorized agent, though not by an advocate, vakil or attorney of the Court; and we are of opinion that, having regard to the provisions of section 404, the appeal was properly presented, and that the case is not governed by the decision to which we have referred. We therefore disallow the preliminary objection.

As regards the merits of the appeal, it has been admitted by the learned vakil for the respondents that he cannot resist the appeal, the Subordinate Judge having made a mistake in not awarding possession of the share of the property to which the decree referred. We therefore modify the decree by directing, in addition to the declaration of title, that the plaintiff be put in possession of the property specified in the decree.

The appeal will be allowed with costs.

Appeal decreed.

(1) (1900) I. L. R., 22 All., 331.