

plaintiff. There were also other defendants to the suit who were in possession of other portions of the property. But with this part of the claim we are not concerned in this appeal, as the Court below has made a decree in favour of the plaintiff in respect of that portion of the property. The lower appellate Court has dismissed so much of the claim as relates to the property sold by the plaintiff's mother and grandmother to the defendants Nos. 5 to 8. That Court has found that the sale was made for the payment of a debt due by the plaintiff's father and of Government revenue payable on account of the estate left by the deceased. It has also found that the consideration for the sale was adequate. The sale being a sale by the *de facto* guardian of the plaintiff and being for the plaintiff's benefit, it is binding upon the plaintiff, and the Court below was, in our opinion, right in refusing to grant the plaintiff a decree in respect of the property comprised in the sale. This case is similar to that of *Hasan Ali v. Mehdi Husain* (1) upon which the learned Subordinate Judge relies. The case of *Hamir Singh v. Musammatt Zakia* (2), to which our attention was invited by the learned vakil for the appellant, is distinguishable, inasmuch as there the sale was made not by the guardian of the minor but by a different person, who had no right to sell the share of the minor. We see no reason to interfere with the decree of the Court below, and accordingly dismiss the appeal with costs to Mr. Baldeo Ram's clients.

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Appeal dismissed.

Before Mr. Justice Blair and Mr. Justice Banerji.

BALCHAND (PLAINTIFF) v. TULSHA KUNWAR (DEFENDANT).*

Act No. XII of 1881 (*N.W.P. Rent Act*), sections 178, 179, 180, 192 and 196—*Execution of decree—Order of Collector under section 181 passed on appeal—Civil suit—Jurisdiction.*

Held that no civil suit would lie at the instance of a person aggrieved by an order passed by the Collector of a district under section 179 or section 180

1903
May 26.

* Second Appeal No. 595 of 1901 from a decree of Babu Nil Madhab Roy, Judge of the Court of Small Causes, exercising powers of Subordinate Judge of Cawnpore, dated the 14th of March 1901, confirming a decree of Pandit Kanhaiya Lal, Munsif of Cawnpore, dated the 17th of December 1900.

(1) (1877) I. L. R., 1 All., 532.

(2) (1875) I. L. R., 1 All., 57.

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of Act No. XII of 1881, when such order was passed by the Collector acting as an appellate Court. *Kaleskar Prasad v. Sita Ram* (1) referred to.

THE defendant, in the suit out of which this appeal arose, held a decree for rent against one Barmah Din. In execution thereof she caused certain movable property of the judgment-debtor to be attached. The plaintiff Balchand preferred a claim to the attached property under section 178 of Act No. XII of 1881. The claim was adjudicated upon by an Assistant Collector of the second class and was dismissed. On appeal to the Collector under section 192 of the Act the order of the Court of first instance was affirmed. The property having in the meantime been sold, the plaintiff brought the present suit for compensation upon the allegation that the property belonged to him and not to the judgment-debtor of the defendant. The Court of first instance (Munsif of Cawnpore) dismissed the suit, and the lower appellate Court (Small Cause Court Judge with powers of a Subordinate Judge) affirmed the decree of the Munsif. The plaintiff thereupon appealed to the High Court.

Babu *Satya Chandra Mukerji*, for the appellant.

Pandit *Baldeo Ram Dave*, for the respondent.

BLAIR and BANERJI, JJ.—The respondent Musammat Tulsha Kunwar had a decree for rent against one Barmah Din, and in execution thereof caused certain movable property of the debtor to be attached. The plaintiff claimed that property under section 178 of Act No. XII of 1881. The claim was adjudicated upon by an Assistant Collector of the second class and was dismissed. On appeal to the Collector under section 192 of the Act the order of the Court of first instance was affirmed. The property having in the meantime been sold, the plaintiff brought the present suit for compensation upon the allegation that the property belonged to him and not to the judgment-debtor of the defendant. Both the Courts below have dismissed the suit upon the ground that it is not maintainable. In our judgment the Courts below were right. Section 181 of Act No. XII of 1881 gives the defeated party a right to maintain a suit like the present only when an order has been made under

section 179 or section 180 by the Collector of the district. It does not confer a right of suit where the Collector of the district makes an order as an appellate Court and not as a Court of first instance. Section 196 declares all orders passed by the Collector of the district other than those referred to in the section to be final. So that it seems that the intention of the Legislature was to place a limitation upon a defeated party's right of suit. It appears to us that what the Legislature intended was that if one Court, namely, the Court of the Collector of the district, adjudicated upon a claim made under section 178, a suit would lie in respect of the matter to which the claim related. But where two Courts have considered the question raised and decided it, the decision of the appellate Court would for all purposes be final. The principle of the ruling in *Kaleshar Prasad v. Sita Ram* (1) seems to be applicable to the present case. We think the Courts below came to a right conclusion and dismiss the appeal with costs.

1903

BALCHAND

v.

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KUNWAR.

Appeal dismissed.

Before Mr. Justice Aikman.

KEDAR NATH AND OTHERS (JUDGMENT-DEBTORS) v. CHANDU MAL
(DECREE-HOLDER).*

1903

May 28.

Act No. IV of 1882 (Transfer of Property Act), section 90—Mortgage—Decree for sale—Half of mortgaged property exempted from sale on suit by third party—Remainder insufficient to satisfy mortgage debt.

A mortgagee held a decree for sale and an order absolute for sale of the property comprised in his mortgage. Before, however, the sale could be carried out, a third person succeeded in establishing his title to one half of the property mortgaged. The decree-holder brought to sale the remaining half of the property covered by his decree, but the amount realized proved insufficient to satisfy the mortgage debt. *Held* that, under such circumstances, there was no bar to the decree-holder obtaining a decree over against the unhypothecated property of the mortgagor under section 90 of the Transfer of Property Act, 1882. *Muhammad Akbar v. Munshi Ram* (2) and *Badri Das v. Intayat Khan* (3) distinguished.

* Second Appeal No. 405 of 1902 from a decree of Babu Bipin Bihari Mukerji, Additional Judge of Moradabad, dated the 16th of January 1902, confirming an order of Shah Amjad-ullah, Munsif of Bijnor, dated the 5th of October 1901.

(1) *Weekly Notes*, 1899, p. 185. (2) *Weekly Notes*, 1899, p. 208.

(3) (1900) I. L. R., 22 All., 404.