

Before Mr. Justice Sir George Knox and Mr. Justice Aikman.
 AMANAT-ULLAH KHAN (PLAINTIFF) v. SARDHA PRASAD AND
 OTHERS (DEFENDANTS).*

1906
 April 11.

Civil Procedure Code, section 232—Execution of decree—Order allowed to become final—Subsequent regular suit.

Held that no suit will lie to establish a right to execute a decree when an order dismissing an application under section 232 of the Civil Procedure Code has been allowed to become final. *Budhan Singh v. Salig Ram* (1), followed. *Sheoraj Singh v. Amin-ud-din Khan* (2), distinguished.

THE assignee of a decree obtained against the defendants, applied under section 232 of the Code of Civil Procedure for substitution of his own name for that of his assignor, but the application was rejected for want of proof. He then filed a suit for establishment of his sale-deed and declaration of right. Both the lower Courts (Subordinate Judge and District Judge of Shahjahanpur) dismissed the suit, on the ground that the plaintiff had allowed the order passed under section 232 to become final.

The plaintiff then preferred this appeal.

Mr. *Karamat Husain* and *Maulvi Ghulam Mujtaba*, for the appellant.

Dr. *Tej Bahadur Sapru*, for respondents.

KNOX, J.—The ruling of this Court in *Budhan Singh v. Salig Ram* (1), is against the appellant. The question raised as to whether there was a good assignment was inquired into by the Courts when an application was made under section 232 of the Code of Civil Procedure and decided adversely to the appellant. He allowed that decision to become final. I consider that the Courts below were right in the view they took, and I dismiss this appeal with costs which in this Court will include fees on the higher scale.

AIKMAN, J.—I am of the same opinion. The decision in *Sheoraj Singh v. Amin-ud-din Khan* (2), to which I was a party, has been relied on as supporting the case of the appellant. The circumstances of that case were peculiar as the allegation of the plaintiff in that case was that he was beneficially interested

* Second Appeal No. 1273 of 1904, from a decree of C. D. Steel, Esq., District Judge of Shahjahanpur, dated the 13th of September, 1904, confirming a decree of Babu Nihala Chandra, Subordinate Judge of Shahjahanpur, dated the 23rd of July, 1904.

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in the sale-deed and the decree passed on it, and as such was entitled to apply for execution of the decree. If the judgment in that case can be held to be a decision to the effect that an assignee of a decree whose application under section 232 the Court which passed the decree has seen fit to reject, can, notwithstanding such order, bring a suit for a declaration of his right to execute the decree, then I think the propriety of that decision is open to doubt.

BY THE COURT.—The order of the Court is that this appeal is dismissed with costs.

Appeal dismissed.

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

SARDAR SINGH AND ANOTHER (DEFENDANTS) v. IJAZ HUSAIN KHAN
AND OTHERS (PLAINTIFFS).*

*Pre-emption—Wajib-ul-arz—Construction of document—Retention of same
wajib-ul-arz after division of village into mahals—Hissadaran deh and
hissadaran patti on the same footing.*

Where a village was divided into three mahals and the new *wajib-ul-arz* which was prepared for one of them, A. M., was copied verbatim from the *wajib-ul-arz* of the village before division and clearly put *hissadaran deh* and *hissadaran patti* on the same footing, held that a co-sharer in the mahal A. M., had no right of pre-emption in regard to property sold in A. M. as against a co-sharer who, though he had no share in the mahal A. M., was a co-sharer in one of the other mahals. *Dalqanjan Singh v. Kalka Singh* (1), referred to.

In this case a village was divided into three mahals and the *wajib-ul-arz* for one of them, mahal Ali Mazhar, was copied verbatim from the *wajib-ul-arz* of the original village. Sardar Singh (appellant here) purchased some property in mahal Ali Mazhar. The present respondents sued to enforce a right of pre-emption. Sardar Singh was not a co-sharer in the new mahal, but was a co-sharer in one of the other mahals and relied on the fact that the *wajib-ul-arz* of the Mahal Ali Mazhar put "*hissadaran deh*" and "*hissadaran patti*" on the same footing.

* First Appeal No. 84 of 1904, from a decree of Pandit Raj Nath Sahib, Subordinate Judge of Allahabad, dated the 22nd of February, 1904.