

Procedure amounts to a decree. We have serious doubts as to the correctness of this decision, and if it were necessary to determine the point we should be disposed to send the case to a Full Bench of the Court. However, having regard to the view which we take of the other point which has been raised by Mr. O'Connor, we do not think it necessary to have this question at present discussed before a full Bench. We are clearly of opinion that the application for ejection made under section 35 was not a step in aid of execution of the decree for arrears of rent. The right of the landlord to eject the tenant under that section is a right supplemental to the right which he had to recover the arrears of rent. It is optional with him whether he will or will not eject his tenant who neglects to satisfy a decree for arrears of rent passed against him. In no way does an order of ejection help the landlord to recover arrears of rent so decreed, and therefore the application under section 35 cannot be said to be in aid of execution of the decree for such arrears. The decision of the Courts below upon this point appears to us to be correct.

For these reasons we dismiss the appeal with costs.

Appeal dismissed.

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

NISAR ALI (DEFENDANT) v. ALI ALI (PLAINTIFF).*

Letters Patent, section 10—Appeal—Revision—Civil Procedure Code, section 622.

No appeal under section 10 of the Letters Patent of the Court will lie from an order of a single Judge of the Court disposing of an application under section 622 of the Code of Civil Procedure. *Naim-ullah Khan v. Ihsan-ullah Khan* (1) *Gauri Datt v. Parsotam Das* (2), *Hira Lal v. Bai Asi* (3) and *Sriramulu v. Ramasam* (4) followed.

In this case the plaintiff-respondent presented his plaint in the Court of an Assistant Collector. The Assistant Collector being of opinion that the suit was not cognizable by a revenue Court ordered the plaint to be returned to the plaintiff for presentation in the proper Court. The plaintiff did not appeal

* Appeal No. 11 of 1905, under section 10 of the Letters Patent.

(1) (1892) I. L. R., 14 All., 226.

(3) (1897) I. L. R., 22 Bom., 891.

(2) (1898) I. L. R., 15 All., 373.

(4) (1890) I. L. R., 22 Mad., 109.

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against that order, but took his plaint to the Court of the Munsif. The Munsif, however, was of opinion that the suit was not cognizable by a Civil Court, and the plaint was again returned to the plaintiff. The plaintiff appealed to the District Judge against the order of the Munsif, but his appeal was dismissed on the ground that he had not appealed from the order of the Assistant Collector, which had since become final. The plaintiff then applied in revision to the High Court, and his application was granted by a single Judge of the Court and the case sent back to the District Judge to be disposed of in accordance with the provisions of section 197 (2) of the Agra Tenancy Act, 1901. Against this order the defendant filed the present appeal under section 10 of the Letters Patent.

Messrs. *Karamat Husain and Ishaq Khan*, for the appellant.
Mr. *Abdul Jabil*, for the respondent.

STANLEY, C. J., and BURKITT, J.—In this Letters Patent Appeal a preliminary objection is raised on behalf of the respondent Ali Ali that no appeal lies from a decision of a single Judge of this Court, passed in the exercise of the revisionary powers conferred by section 622 of the Code of Civil Procedure. This question has been the subject of discussion on a number of occasions in this High Court, and it has been decided by a Bench of the Court that an appeal does not lie under such circumstances. In the case of *Muhammad Naim-ullah Khan v. Ihsan-ullah Khan* (1), which was a Full Bench case, it was laid down by the learned Judges that no appeal lay in such a case. Again, in the case of *Gauri Datt v. Parsotam Das* (2) it was also held that no appeal will lie under section 10 of the Letters Patent from an order of a single Judge of the High Court in revision under section 25 of Act No. IX of 1887. The principle applicable to the present case and to a case coming under section 25 of Act No. IX of 1887 is the same. We find that the same question has been decided by the Bombay and Madras High Courts. In the case of *Hira Lal v. Bai Asi* (3) it was held that no appeal lies under clause 15 of the Letters Patent from an order of a single Judge of the High Court, dismissing an application for

(1) (1892) I. L. R., 14 All., 226.

(2) (1893) I. L. R., 15 All. 373.

(3) (1897) I. L. R., 22 Bom., 691.

the exercise of the Court's extraordinary or revisional jurisdiction. Again in the case of *Sriramulu v. Ramasam* (1) it was likewise held that no appeal lies under the Letters Patent against an order made by a single Judge, dismissing an application under section 622 of the Code. These authorities are sufficient, we think, to justify the preliminary objection which has been raised on the part of the respondent. We fully concur in them. We therefore allow the preliminary objection and dismiss the appeal with costs, including fees in this Court on the higher scale.

Appeal dismissed.

Before Mr. Justice Know.

DAMODAR DAS (DEPENDANT) v. INAYAT HUSAIN AND OTHERS

(PLAINTIFFS.)*

Civil Procedure Code, section 37—Meaning of the term "resident"—Powers of a general attorney during a merely temporary absence of his principal.

The term "resident," as used in section 37(a) of the Code of Civil Procedure, must be construed liberally. A party "not resident within the local limits of the jurisdiction of the Court" may include a person who, though originally residing within, is temporarily absent from the limits of the Court's jurisdiction. *Ramchandra v. Keshav* (2) followed.

BABU Damodar Das was an appellant in the Court of the District Judge of Jaunpur. At the hearing the respondents took a preliminary objection to the effect that the pleader who had presented the memorandum of appeal had been appointed, not by the appellant himself, but by the appellant's general attorney, although the appellant was himself resident within the local limits of the jurisdiction of the Court; that such appointment was invalid, and that in consequence there was no memorandum of appeal duly presented before the Court. As a matter of fact the appellant ordinarily resided in Jaunpur, but he had been away at Cawnpore from the 23rd of August to the 1st of September 1903, during which time his general attorney, Har Shankar Das, had given a vakalatnama to a pleader, and the appeal had been filed. The District Judge gave effect to

* Second Appeal No. 65 of 1904, from a decree of Syed Muhammad Ali, District Judge of Jaunpur, dated the 17th of November 1903, confirming a decree of Maulvi Syed Zain-ul-abdin, Subordinate Judge of Jaunpur, dated the 17th of July 1903.

(1) (1898) I. L. R., 22 Mad., 109.

(2) (1881) I. L. R., 6 Bom., 100.

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