

1905

RAM SINGH
v.
SALIG RAM.

jurisdiction to decide the question whether or not the applicant's property had been sold, and having honestly decided to the best of its ability that the property sold was not the property of the applicants it had jurisdiction to refuse to make an order setting aside the sale. For these reasons I would also dismiss the application.

By THE COURT.—The application is dismissed with costs.

APPELLATE CIVIL.

1905
June 27.

Before Mr. Justice Banerji and Mr. Justice Richards.

VILAYAT HUSEN (JUDGMENT-DEBTOR) v. MAHARAJA MAHENDRA
CHANDRA NANDY (DECREE-HOLDER).*

Act (Local) No. II of 1901 (Agra Tenancy Act), section 193—Civil Procedure Code, sections 562 and 588—Remand—Appeal.

There is no appeal from an order of remand passed under section 562 of the Code of Civil Procedure in a suit or proceeding under the Agra Tenancy Act, 1901.

THIS was an appeal arising out of an application to execute a decree for rent against a surety under the provisions of section 253 of the Code of Civil Procedure. The surety raised various objections to the decree being executed against him, with the result that the decree-holder's application was dismissed by the first Court (Deputy Collector). The decree-holder appealed, and on this appeal the District Judge set aside the decision of the Deputy Collector and remanded the case under section 562 of the Code of Civil Procedure. From this order of remand the judgment-debtor appealed to the High Court.

Mr. *Abdul Majid*, for the appellant.

Babu *Jogindro Nath Chaudhri* and Maulvi *Muhammad Ishaq*, for the respondent.

BANERJI and RICHARDS, JJ.—We think that the objection taken on behalf of the respondent that no appeal lies must prevail. The appeal has been preferred against an order made under section 562 of the Code of Civil Procedure remanding

* First Appeal No. 18 of 1905, from an order of L. Marshall, Esq., District Judge of Ghazipur, dated the 22nd of September 1904.

the case to the Court of first instance for trial. The order complained of was made in proceedings under the Tenancy Act, 1901, for execution of a decree against a surety, which could, by reason of the provisions of section 253 of the Code of Civil Procedure, be made against him. Section 193 of the Tenancy Act, which provides for the application of some of the provisions of the Code of Civil Procedure to suits and other proceedings under the Act, excludes Chapter XLIII of the Code from application to such suits and proceedings. As section 588, under which alone this appeal could be preferred, appears in Chapter XLIII and has not been extended to suits and proceedings under the Tenancy Act, this appeal is not maintainable.

Assuming that the appeal is maintainable, we think that the order of the Court below is a proper order. We accordingly dismiss this appeal with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

1905

June 29.

Before Mr. Justice Know.

EMPEROR v. KUNA SAH.

*Criminal Procedure Code, sections 4, 476—Jurisdiction—“Judicial proceedings”—Inquiry into petition against subordinate official.**

Held that an inquiry conducted by a Magistrate into the truth of allegations against a subordinate official contained in a petition presented to a Deputy Commissioner is a judicial proceeding within the meaning of section 4 (m.) of the Code of Criminal Procedure. *Hara Charan Mookerji v. The King-Emperor* (1) distinguished.

THE applicant in this case presented a petition to the Deputy Commissioner of Almora containing certain serious accusations against one Durga Dat Tiwari, a peshkar. By orders of the Deputy Commissioner these accusations were inquired into by a Deputy Magistrate of the first class, who found them to be false and malicious. The Deputy Magistrate accordingly passed an order under section 476 of the Code of Criminal Procedure, directing the prosecution of the applicant under section 211 of the Indian Penal Code. The applicant then came in revision

* Criminal Revision No. 249 of 1905.

(1) (1905) L. L. R., 32 Calc., 867.