

decree only so far as it relates to the subject-matter of the suit. It is impossible to ignore the strong opinion expressed by their Lordships in the case of *Pranal Anni v. Lakshmi Anni* (1). We therefore hold that under the circumstances of the present case the compromise of the 27th of April 1890 did not require registration and was admissible in evidence and should have been admitted by the lower appellate Court. It is unnecessary to go into the question of stamps, which has been decided by the lower Court in favour of the appellant. As the lower appellate Court decided the case on a preliminary point, and its decision is in our opinion erroneous, we allow the appeal, set aside the decree of the lower appellate Court, and remand the case to that Court under section 562 of the Code of Civil Procedure for trial on the merits. The appellants will have their costs of this appeal; other costs will follow the event.

Appeal decreed and cause remanded.

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MAHABIR
SINGH.

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

LOK NATH (PLAINTIFF) v. AMIR SINGH AND OTHERS (DEFENDANTS).*
*Civil Procedure Code, sections 491 and 588—Attachment before judgment—
Compensation for unnecessary attachment—Appeal.*

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Held that no appeal will lie from an order under section 491 of the Code of Civil Procedure granting compensation to a person against whom an attachment has been obtained upon insufficient grounds. *Narasinga Bhakshi v. Govinda Bhakshi* (2) followed.

THE plaintiff in this case sued upon a bond to recover a principal sum of Rs. 800 and interest thereon. Before judgment he applied to the Court, under section 483 of the Code of Civil Procedure, for security from the defendants to satisfy the decree, and in default for attachment of the defendants' property. The plaintiff obtained an order for security, but no security was given, and in consequence some of the defendants' property was attached. The defendants did not resist the claim, but

* Second Appeal No. 1081 of 1903, from a decree of Maulvi Aziz-ul-rahman, Subordinate Judge of Mainpuri, dated the 4th of August 1903, modifying a decree of Maulvi Muhammad Hussain, Munsif of Etawah, dated the 5th of March 1903.

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paid the amount of the bond into Court. They, however, applied for compensation on account of the attachment taken out by the plaintiff upon the ground that it had been procured upon totally unreasonable grounds. The Court of first instance (Munsif of Mainpuri) granted substantial compensation to the defendants. An appeal from this order was preferred by the plaintiff, but was dismissed by the Subordinate Judge upon the finding that no appeal lay from an order passed under section 491 of the Code of Civil Procedure. From this dismissal of his appeal the plaintiff appealed to the High Court.

Messrs. *R. K. Sorabji* and *M. L. Agarwala*, for the appellant.

Dr. Satish Chandra Banerji, for the respondents.

STANLEY, C. J., and BURKITT, J.—The facts of this case are shortly as follows:—The plaintiff's suit was brought to recover the amount due to him on a bond for Rs. 800 with interest. Before judgment he applied to the Court, under section 483 of the Civil Procedure Code, for security from the defendants to satisfy the decree and in default for attachment of the defendants' property. Security was not given by the defendants, although they appeared to be men of considerable means. In consequence of their refusal to give security a portion of their property was attached. The claim of the plaintiff was not resisted, and in fact the amount of the bond was deposited in Court. An application, however, at the hearing of the suit was made on behalf of the defendants for compensation in respect of the attachment of the defendants' property, it being alleged that the attachment was applied for on insufficient grounds. The Court of first instance came to the conclusion that this claim for compensation was well founded; that in fact the plaintiff had applied for attachment without any reasonable ground for believing that the amount of the decree which might be obtained against the defendants would not be forthcoming. Accordingly, that Court awarded very substantial compensation. With the amount of it we are not concerned here in second appeal.

An appeal was preferred from this order for compensation. The learned Subordinate Judge before whom the appeal came

dismissed it on the ground that no appeal lay from an order passed under section 491. From this decree the present appeal has been preferred, and the question before us is whether or not an appeal lies from an order passed under section 491.

Section 491 empowers the Court on the application of the defendant in a case in which an attachment has been applied for on insufficient grounds to award against the plaintiff in its decree such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him by the attachment. It has been forcibly contended by Mr. *Sorabji* on behalf of the appellant that, inasmuch as the order passed under this section is embodied in the decree itself, it therefore forms part of the decree, and, having regard to section 540 of the Code, is the subject of an appeal. On behalf of the respondents it is contended that the mere fact that the order passed under section 491 is directed to be embodied in the decree does not make it part of the decree so as to render section 540 applicable.

We are disposed to take this view of the question, and for these reasons:—Section 588 allows an appeal to be preferred in the case of an order passed under section 497, which is a parallel section with section 491. Section 497 allows the Court on the application of the defendant against whom an injunction has been issued on insufficient grounds to award against the plaintiff in its decree such sum, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him by the issue of the injunction. The language of section 491 appears to be almost identical with the language of section 497. In both cases the order passed under the section is to be embodied in the decree, and is called an award. Sub-section 24 of section 588 allows an appeal to be preferred against an order passed under section 497, but nowhere refers to an order under section 491. It therefore seems to follow, having regard to the opening words of section 588, that the Legislature did not intend to give a right of appeal against an order passed under section 491. The opening words of the section are:—“An appeal shall lie from the following orders under this Code *and from*

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no other such orders." An order passed under section 491 is in all respects a similar order to an order passed under section 497, and therefore comes under the words "no other such orders." It therefore seems to us that the Legislature expressly excludes a right of appeal in respect of orders passed under section 491. We regret that we are obliged to come to this conclusion, because it is possibly the case that through inadvertence or otherwise orders under section 491 were not mentioned in section 588. Most unjust orders may be passed under this section, and yet there is no right of appeal. We are supported in the view which we have taken by the decision in the case *Narasinga Bhakshi v. Govinda Bhakshi* (1). For the above reasons we dismiss the appeal with costs.

Appeal dismissed.

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REVISIONAL CIVIL.

Before Mr. Justice Banerji and Mr. Justice Richards.

RAM SINGH AND ANOTHER (JUDGMENT-DEBTORS) v. SALIG RAM (DROCK-HOLDER) AND KURE SINGH (AUCTION PURCHASER).*

Civil Procedure Code, sections 310A, 622—Execution of decree—Application to set aside sale—Who have a right to apply—Revision.

A mortgagee sued for sale on his mortgage impleading besides the mortgagee two persons who claimed a title to the mortgaged property adverse to the mortgagee. In that suit it was decided that the property the subject of the mortgage in suit belonged to the mortgagor and not to the other defendants. The plaintiff mortgagee obtained a decree for sale and caused the mortgaged property to be sold by auction. The defendants, other than the mortgagor, applied to have this sale set aside under section 310A of the Code of Civil Procedure, but their application was rejected, and they then sought in revision to get this order reversed.

Held by BANERJI, J.—That the defendants applicants were not entitled to make an application under section 310A of the Code, they not being judgment-debtors whose property had been sold.

Per RICHARDS, J.—Whether or not the applicants were entitled to make the application which they did make (and they possibly were so entitled) the Court below did not fail to exercise a jurisdiction vested in it by law nor did it act in the exercise of that jurisdiction illegally. Its order was, therefore, not open to revision. *Rajah Amir Hassan Khan v. Sheo Baksh Singh* (2) referred to.

* Civil Revision No. 1 of 1905.

(1) (1900) I. L. R., 24 Mad., 62.

(2) (1884) L. R., 11 I. A., 287.