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v.
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SINGH.

present cannot be transferred to another district. The question is open to argument, but we do not feel ourselves justified in disregarding these rulings. We therefore dismiss the application. At the same time we cannot approve of the action taken by the District Magistrate, however well-intentioned that action may have been, specially having regard to the fact that the case might come before himself in appeal under section 406 of the Code of Criminal Procedure.

APPELLATE CIVIL.

Before Mr. Justice Banerji and Mr. Justice Aikman.

LOHRE (PLAINTIFF) v. DEO HANS AND ANOTHER (DEFENDANTS).*

Appeal—Parties—Estoppel—Procedure.

The plaintiff having obtained a decree against one of two defendants acquiesced in that decree, but the defendant judgment-debtor appealed, making the other defendant also a party to his appeal, with the result that the plaintiff's suit was dismissed. *Held* that it was not open to the plaintiff in second appeal to contend that the Court below should have made a decree against that defendant with regard to whom he had acquiesced in the dismissal of his suit. *Farzand Ali Khan v. Bismillah Begam* (1) followed.

THE plaintiff in this case sued a tenant, one Deo Hans, for rent. The tenant pleaded payment of the whole rent to Sita Ram, the plaintiff's co-sharer in the holding. The Court of first instance decreed the suit as against Sita Ram and dismissed it *qua* Deo Hans. Sita Ram then appealed, making Deo Hans a party to his appeal, but the plaintiff acquiesced in the decree which he had obtained against Deo Hans alone. The lower appellate Court (District Judge of Agra) allowed Sita Ram's appeal, and dismissed the suit. The plaintiff appealed to the High Court, urging that the Court below was wrong in dismissing the plaintiff's claim as against both defendants.

Pandit Mohan Lal Sandal, for the appellant.

Pandit Baldeo Ram Dave, for the respondent Sita Ram.

BANERJI and AIKMAN, JJ.—The suit which has given rise to this appeal was brought by Lohre, appellant, against Deo Hans, respondent, for arrears of rent for the years 1309 to 1312 Fasli.

* Second Appeal No. 158 of 1906 from a decree of F. E. Taylor, District Judge of Agra, dated the 12th of December 1905 reversing a decree of Habib-Ullah, Assistant Collector, Agra, dated the 28th of June 1905.

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The plaintiff joined as a defendant to the suit Sita Ram, respondent, who, he said, was his co-share and had refused to join in bringing the suit. The Court of first instance dismissed the claim as against Deo Hans and decreed it against Sita Ram. The plaintiff acquiesced in this decree and did not appeal against that part of it which dismissed his claim against Deo Hans. Sita Ram appealed, making the plaintiff and Deo Hans respondents to the appeal. The lower appellate Court decreed the appeal and dismissed the suit. The plaintiff has preferred this appeal, and contends that the Court below ought to have made a decree in his favour against Deo Hans. This contention is untenable. The plaintiff having submitted to the decree of the first Court dismissing the claim against Deo Hans, and there being no appeal by the plaintiff against Deo Hans, the appellate Court could not on the appeal of Sita Ram make a decree in favour of one respondent against the other. Several rulings having been cited to us, but the case most in point is that of *Parzand Ali Khan v. Bismillah Begum* (1). This ruling is against the appellant. The appeal fails and is accordingly dismissed with costs.

Appeal dismissed.

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

BALAK PURI (DEFENDANT) v. DURGA (PLAINTIFF) AND
OTHERS (DEFENDANTS). *

Civil Procedure Code, section 365—Death of sole plaintiff—Claim of one of the defendants to continue the suit as plaintiff—Abatement of suit.

The original plaintiff sued for redemption of a mortgage executed by her father. She claimed as the only unmarried daughter of three, arraying as defendants, besides the mortgagee, her surviving married sister and the minor children of the second sister, deceased. During the pendency of the suit the plaintiff died. *Held* that, the claim being personal to the plaintiff, the suit abated and that the surviving sister could not be permitted to carry on the suit in substitution for the original plaintiff.

THIS was a suit brought by one Musammat Parbhawati, one of the four daughters of one Nar Singh Bhan, for redemption of two mortgages of the 7th of July 1871 and 26th of September 1871, executed in favour of the Akhara Panchaiti to secure two

* First Appeal No. 91 of 1905 from a decree of Rajnath Sahib, Subordinate Judge of Allahabad, dated the 24th of March 1905.

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