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title has been determined by that Court. In our judgment when the Assistant Collector decided to determine the question of title himself, the suit ceased to be a suit included in group C, and the Revenue Court for the purposes of that suit ceased to be a Revenue Court in the strict sense of the word and became for the moment a Civil Court competent to try the question of proprietary title, with a right of appeal by either party to the District Judge. The result is that we allow the appeal, set aside the decree of the lower appellate Court and restore that of the Court of first instance. As we think that the defendant ought to have raised the question of jurisdiction of the Commissioner when the appeal was taken from the Assistant Collector to him, we make no order as to costs.

*Appeal decreed.*

1907  
May 31.

*Before Sir George Knox, Acting Chief Justice, and Mr. Justice Richards.*

HANSRAJ PAL (PLAINTIFF) v. MUKHRAJI KUNWAR AND OTHERS (APPLICANTS) AND DALPAT PAL AND OTHERS (DEFENDANTS). \*

*Civil Procedure Code, section 232—Decree for possession of immovable property—Sale of property decreed—Right to execute decree.*

If a decree-holder holding a decree for possession of immovable property, sells a portion of such property, the sale does not, without express provision to that effect give the purchaser any right to execute the decree himself. *Ram Sahai v. Gaya* (1) referred to.

IN this case one Hansraj Pal having obtained a decree for the possession of certain immovable property sold a portion of the property so decreed, but did not execute any assignment of the decree. The vendees made an application under section 232 of the Code of Civil Procedure contending that the effect of the sale deed was to transfer to them a right to execute the decree to the extent of the property comprised therein. The Court to which this application was made (Subordinate Judge of Gorakhpur) refused the application. On appeal, the District Judge held that section 232 of the Code, did apply under the circumstances and that the applicants were entitled to execute the decree in the manner asked for, and accordingly set aside the order of the first Court and remanded the case under section 562 of

\* First Appeal No. 82 of 1906, from an order of R. L. H. Clarke, District Judge of Gorakhpur, dated the 23rd of May 1906.

(1) (1884) I. L. R., 7 All., 107.

the Code. From this order the plaintiff appealed to the High Court.

Munshi *Iswar Saran* for the appellant.

Munshi *Gobind Prasad*, for the respondents.

KNOX, ACTING C.J., and RICHARDS, J.—In this suit the plaintiff obtained a decree for possession of certain immovable property. After recovery of the decree the plaintiff sold a portion of the property to different persons reserving some portion of the property to himself. The respondents applied under section 232 of the Code of Civil Procedure, contending that by the sale deed the decree had been transferred to them to the extent of the property mentioned in the sale deed, and that they were entitled to execute the decree. The Court to which the application was made refused the application. The present respondents appealed, with the result that the decision of the Court of the first instance was reversed, the Court holding that section 232 did apply under the circumstances and respondents were entitled to execute the decree in the manner they asked, and remanded the case under section 562 of the Code of Civil Procedure. The decree-holder now appeals against the order of remand. He contends that no appeal lay from the decision of the Court of first instance, the Court having refused to allow the respondents to execute the decree under section 232. He also contends that under no circumstances could the provisions of section 232 apply to the transaction between him and the respondents. We will take the second point first, because if this point be decided in favour of the appellant, it becomes quite unnecessary to decide whether or not an appeal lay from the order refusing to allow execution under section 232. We have considered the sale deed, which is on the record, and we find that it in no way purports to sell or transfer the decree. The only reference to the decree is that the vendor states, after selling the property and having referred to the description of it, "to which my title has been declared by the decree," *et cetera*. We have to consider whether a sale of the property for possession of which a vendor has obtained a decree necessarily carries with it assignment of decree itself. We certainly think that it does not. It might happen that a vendor might get a decree for possession of the property together with an award of a large sum for mesne

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profits and costs. It could never be contended that if before he executed the decree he sold the property or a portion of it that this sale deed without express words would carry with it the right to the mesne profits and costs. In the decision of this Court in *Ram Sahai v. Gaya* (1) Mr. Justice Mahmood has further illustrated the difference between a transfer of property and a transfer of a decree. It is the respondents' misfortune, if, when obtaining a sale deed of the property, they neglected to provide either that the decree should be assigned to them or that the decree-holder should be bound to execute the decree and put them into possession. We wish to point out that in deciding this appeal in favour of the appellant, we do so on the ground that no application could legally be made to execute the decree under section 232. We make this remark lest our present decision should prejudice any suit which the respondent may be advised to institute in order to get the benefit of their sale deed. As a result, we must allow the appeal, set aside the order of the lower appellate Court and restore that of the Court of first instance with costs.

1907  
June 3.

Before Mr. Justice Aikman.

KANIZ FATIMA (DEFENDANT) v. WALI-ULLAH AND OTHERS (PLAINTIFFS).  
*Benamidar - Suit for sale on a mortgage - Decree giving benamidar a right to redeem - Right to redeem not availed of - Subsequent suit for redemption by alleged beneficial owner barred.*

A decree for sale on a mortgage was passed giving a right of redemption to a puisne mortgagee. The puisne mortgagee did not redeem and the decree became absolute. *Held* that no subsequent suit for redemption would lie by a person alleging that he was the real puisne mortgagee and that the person whose name appeared in the decree as puisne mortgagee was merely a benamidar.

THE facts of this case are as follows :—

IN 1891 the predecessor in title of one Musammat Sadiq-un-nissa made a mortgage in favour of Hakim Waris Ali of the property in suit. On the 18th of January 1897 Sadiq-un-nissa and her husband made a mortgage of the same property in favour of

\* Second Appeal No. 599 of 1906, from a decree of Pitambar Joshi, Subordinate Judge of Bareilly, dated the 12th of April 1906, confirming a decree of Banko Bihari Lal, Munsif of Bareilly, dated the 30th of June 1905.

(1) (1884) I. L. R., 7 All., 107.