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MISCELLANEOUS CIVIL.

1908
July 17.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.

ATWARI AND ANOTHER (OBJECTORS) v. MAIKU LAL (OPPOSITE PARTY). *
*Civil Procedure Code, section 223—Execution of decree—Decree of Court of
Small Causes transferred for execution to a Munsif—Appeal.*

A decree of a Court of Small Causes was transferred for execution under section 223 of the Code of Civil Procedure to the Munsif's Court because the decree-holder sought in execution to bring to sale immovable property of the judgment-debtor. *Held* that an order in execution of such decree passed by the Munsif was appealable to the District Judge.

IN this case a decree was passed by a Court of Small Causes in a suit cognizable by such Court. The decree-holder sought in execution to attach and bring to sale immovable property of his judgment-debtor, and, inasmuch as the Court of Small Causes had no jurisdiction to sell immovable property, the decree was sent for execution to the Court of the Munsif. There certain objections were raised by the judgment-debtor. The objections were overruled, and the judgment-debtor appealed to the District Judge. Before the District Judge the question was raised whether any appeal lay to his Court, and on this point the District Judge referred the case to the High Court under the provisions of section 617 of the Code of Civil Procedure.

The parties were not represented.

STANLEY, C. J., and BANERJI, J.—This is a reference by the learned District Judge of Farrukhabad under section 617 of the Code of Civil Procedure. The facts are these:—A decree was made by a Court of Small Causes in a suit cognizable by that Court. As the decree-holder sought to realize the amount of the decree by attachment and sale of immovable property, the

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Court of Small Causes sent the decree to the Munsif's Court for execution under the provisions of section 223 of the Code of Civil Procedure. An application for execution was accordingly made in the Munsif's Court. Objections were raised on behalf of the judgment-debtor. Those objections having been overruled, the judgment-debtor appealed to the District Judge. In his Court the question was raised whether an appeal lay from the order of the Munsif. It was contended before him that as the suit was of the nature cognizable in a Court of Small Causes the proceedings in execution taken in the Munsif's Court should be deemed to be proceedings in a Small Cause Court suit and were therefore final. The fallacy which underlies this contention is that in the present case the suit was not transferred to the Munsif's Court, nor were execution proceedings pending in the Small Cause Court transferred to the Munsif's Court, but the decree was sent under section 223 of the Code, as immovable property was sought to be sold. Had the suit or the execution proceedings been transferred to the Munsif's Court under section 25 of the Code of Civil Procedure, or had the execution proceedings been instituted in the Munsif's Court under section 35 of the Provincial Small Cause Court's Act, the proceedings in the Munsif's Court might be regarded as proceedings held by a Court of Small Causes. But this was not so. The Court of Small Causes had no jurisdiction to sell immovable property, and for this reason the decree was sent to the Munsif's Court in order that execution proceedings might be held in that Court. The order passed by the Munsif was an order which he might have passed in a suit instituted in his Court. From such an order an appeal ordinarily lay to the District Judge, and therefore in the present case the appeal preferred in the Court of the District Judge could in our judgment be entertained. Section 27 of the Small Cause Court's Act has no application to a case of this kind. This is our answer to the reference.