

Before Mr. Justice Prinsep and Mr. Justice Ghose.

DURGA CHARAN MOJUMDAR (DECREE-HOLDER) *v.* UMATARA
GUPTA (JUDGMENT-DEBTOR).^{*}

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February 21.

Execution of decree—Transfer of decree for execution—Civil Procedure Code, 1882, s. 223.

Section 223 of the Code of Civil Procedure, which declares that the Court which passes a decree may, on the application of the decree-holder, send it for execution to *another Court*, should be interpreted to mean another Court having jurisdiction and competent to execute that decree, having regard to the amount or value of the subject-matter of its ordinary jurisdiction.

Narasayya v. Venkata Krishnayyar (1), dissented from.

THE facts as stated by the lower Appellate Court were as follows:—

“Umatara Gupta obtained a decree for about Rs. 500, against one Rajoni Kanta Sen, in the Subordinate Judge’s Court, at Com-millah. About the same time Rajoni Kanta obtained a decree for about Rs. 800, against Umatara, in the Court of the First Munsiff of Muradnagor. Rajoni subsequently sold his decree to Durga Charan Mojumdar. When execution of the larger decree was taken out in the Munsiff’s Court by the then decree-holder, Durga Charan Mojumdar, Umatara Gupta applied to have her own decree set off against that which was sought to be executed. Her application was rejected by the Munsiff on the ground of want of the necessary certificate under s. 224 of the Civil Procedure Code from the Court (that of the Subordinate Judge) which had passed the decree. On appeal to this Court the Munsiff’s order was affirmed. Umatara Gupta then applied to the Subordinate Judge for the necessary certificate under s. 224, which she obtained and duly filed in the Munsiff’s Court: this was on the 16th February 1888. The Munsiff deferred consideration of the petition until the 9th April, the date fixed for the sale of Umatara Gupta’s attached property, and on that date he

* Appeal from Order No. 416 of 1888, against the order of D. Cameron, Esq., Judge of Tipperah, dated the 30th of June 1888, reversing the order of Baboo K. D. Chowdhry, Munsiff of Muradnagor, dated the 9th of April 1888.

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passed an order rejecting her application for set-off, on the ground that her judgment-debtor was Rajoni Kant Sen, and not Durga Charan Mojumdar, the transferee of the decree under execution."

The Judge reversed the decision of the Munsiff, and directed that "the set-off applied for be allowed."

From this order Durga Charan Mojumdar appealed to the High Court on the ground, among others, that the Subordinate Judge had no power to transfer the decree to the Munsiff for execution.

Baboo *Okhoy Coomar Banerjee* for the appellants.

Baboo *Rajendro Nath Bose* for the respondents.

The judgment of the Court (PRINSEP and GHOSE, JJ.) was as follows:—

The matter for our decision in this appeal is whether the Munsiff was competent to execute a decree transferred to him by the Subordinate Judge who passed it.

It appears that the appellants obtained a decree from the Munsiff which he put into execution. Another decree had been obtained against him, or rather against his assignor, in the Court of the Subordinate Judge, and the decree-holder thereupon obtained an order from the Subordinate Judge to transfer the decree by an order under s. 223 to the Court of the Munsiff, in order that it might be set off as a cross-decree. The sole question submitted for our decision is whether such an order can be passed by the Subordinate Judge so as to give the Munsiff jurisdiction. The terms of s. 223, standing by themselves, are sufficiently wide to permit this, but we think that they should be read with the other portions of the Code which restrict their application. Section 6 of the Code declares that "nothing in this Code affect the jurisdiction or procedure, or shall operate to give any Court jurisdiction over suits of which the amount or value of the subject-matter exceeds the pecuniary limits (if any) of its ordinary jurisdiction." Now all matters relating to execution of decrees are regarded as proceedings in a suit, and the chapter relating to matters in execution forms portion of Part I of the Code which is entitled "Of suits in general." We may also refer to the well-known case of *Mungul Pershad Dohit v. Grija*

Kant Lahiri (1) in which their Lordships of the Privy Council expressed themselves in a similar manner. Section 246 of the Code, Explanation I, relating to the execution of cross-decrees, is also important in this respect. It declares that the decrees contemplated by that section are decrees capable of execution at the same time and by the same Court. These expressions, in our opinion, seem to indicate a limitation in respect to the powers of execution by Courts of inferior jurisdiction. In respect to s. 223, we may also observe that the Court of the Munsiff, although inferior to the Court of a Subordinate Judge, is not, within the terms of s. 2, subordinate thereto. The definition of "District Court," as therein given, seems to contemplate that all Courts within a district are subordinate to the District Court, that is to say, the principal Civil Court of Original Jurisdiction, rather than to the Court of the Subordinate Judge, which is a Court generally having concurrent original jurisdiction with a District Court. We accordingly hold that s. 223, which declares that the Court which passes a decree may, on the application of the decree-holder, send it for execution to *another Court*, should be interpreted to mean another Court having jurisdiction and competent to execute that decree, having regard to the amount or value of the subject-matter of its ordinary jurisdiction. We have considered the case of *Narasayya v. Venkata Krishnayya* (2), but we are unable to concur in the opinion expressed by the learned Judges of the Madras Court. We have been referred to a case decided by another Division Bench of this Court (Pigot and Beverley, JJ.), on the 7th instant—*Gobul Kristo Chunder v. Akhil Chunder Chatterjee* (3)—in which the view taken of the decision of the Madras Court coincides with that we now express. The respondent is not without remedy in obtaining a set-off for the amount of his decree against the decree now under execution against him, provided he can satisfy any objections that may be raised as to a set-off being no longer allowable by reason of the assignment. He can, if so advised, apply to the District Court under s. 25 for the transfer of the decree

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(1) I. L. R., 8 Cal., 51; L. R., 8 I. A., 123.

(2) I. L. R., 7 Mad., 397.

(3) *Ante* p. 457.

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under execution in the Court of the Munsiff to that for the Subordinate Judge, so that the Subordinate Judge may deal with both decrees together. The order of the lower Appellate Court is accordingly set aside, and the order of the Munsiff disallowing execution of this decree restored, but not on the grounds stated by the Munsiff, which are still open for consideration before a properly constituted Court.

J. V. W.

Appeal allowed.

PRIVY COUNCIL.

P. C.*
 1888
 November
 18th.

MAJID HOSSAIN AND OTHERS (PLAINTIFFS) v. FAZL-UN-NISSA
 (DEFENDANT).

[On appeal from the Court of the Judicial Commissioner of
 Oudh.]

Registration—Registration in accordance with the rules of 1862, regulating the place and mode of it, in Oudh—Oudh Estates Act I of 1869, s. 13.

An Oudh talukdarni made a grant of a village, part of her talukdari, to her adopted daughter; the instrument requiring, in order to be valid under Act I of 1869, s. 13, to be registered within one month after execution. With a view to its registration, she, being a purdanaschin, sent for the neighbouring Pargana Registrar, who attended at her house for her convenience, took her acknowledgment of the document, recorded the registration, and filed a copy of the document in his office.

Held, that this proceeding was a registration of the document, complete and effective; having been, substantially, a registration at the Pargana office.

APPEAL from a decree (26th August 1885) affirming a decree (1st June 1885) of the District Judge of Lucknow.

The question was, whether a deed of gift required to be registered under Act I of 1869, s. 13, had been effectively registered.

The suit in which this question was raised was brought by Amir Haidar, talukdar of Gauria in the Lucknow District, to have set aside a deed of gift, of village Nizampur, executed, on 21st March 1871, by the late Mussammut Kutb-un-Nissa, his

* *Present*: LORD FITZGERALD, LORD HOBHOUSE, SIR R. COOKE, and MR. STEPHEN WOLFE FLANAGAN.