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the question or he may proceed to inquire into the merits of the objection himself. Clause (3) provides that if this last mentioned course is adopted the Collector is to follow the procedure laid down in the Code of Civil Procedure for the trial of original suits, and in that case an appeal lies to the District Judge (section 112). It is clear that no appeal lies to the District Judge when the Collector makes an order under clauses (*a*) and (*b*) of section 111 (1). Clause (2) provides that if the Collector requires a party to bring a suit within three months and he fails to comply with the requisition, the Collector must decide the question against him. It is contended on behalf of the appellant that he substantially complied with the order of the Collector directing him to institute a suit. We find that all he did was to put in a defence to the effect that the family was a joint family and that the suit should be dismissed on the ground that all the family property had not been included in the suit. It is stated (probably correctly) that the result of this defence was that Mukand Lal's suit for partition in the Civil Court was dismissed. In our opinion what Har Prasad did was in no way a compliance with the order of the Collector directing Har Prasad to institute a suit in the Civil Court within three months. Even if we assume that Har Prasad substantially complied with the order of the Collector and that the latter should have decided in favour of Har Prasad, the section does not provide for an appeal in such case to the District Judge. We think the court below was right. We accordingly dismiss the appeal with costs.

Appeal dismissed.

Before Justice Sir Pramada Charan Banerji, and Mr. Justice Tudball.

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November, 22.

KHETRA (DEFENDANT) *v.* MUMTAZ BEGAM (PLAINTIFF) AND INAM ALI KHAN (DEFENDANT).*

Civil Procedure Code (1908), order XXI, rule 63—Execution of decree—Suit for declaration that property is not liable to attachment and sale—Valuation of suit.

Held that in a suit for a declaration that property is not liable to attachment and sale in execution of a decree, where the value of the property is in excess of the amount claimed in execution of the decree, the proper valuation of the suit for the purpose of jurisdiction is, not the value of the property, but

* First Appeal No. 353 of 1913, from a decree of Shekhar Nath Banerji, Subordinate Judge of Agra, dated the 1st of August, 1913.

the amount for which the decree may be executed. *Dwarka Das* v. *Kameshar Prasad* (1) and *Dhan Devi* v. *Zamurrad Begam* (2) followed. *Phul Kumari* v. *Ghanshyam Misra* (3) referred to.

THE facts of this case were as follows :—

The first defendant, who is the appellant here, holds a decree against the second defendant, the husband of the plaintiff respondent. In execution of that decree he caused the property in suit to be attached as the property of his judgement-debtor. An objection was preferred by the plaintiff claiming the property under a sale deed alleged to have been executed in her favour on the 22nd of May, 1912. Her objection having been overruled she brought the present suit on the 4th of January, 1913, and asked for a declaration that the property in suit "was not liable to attachment and sale in satisfaction of the amount due to defendant No. 1," and she also prayed that her right to the property be declared. She alleged the date of the cause of action to be the 4th of January, 1913. No doubt she made her husband a party to the suit, but she asked for no relief against him and did not allege any cause of action which would entitle her to sue him. Apparently her husband was only made a formal defendant to the suit. The lower court decreed her claim and the decree-holder, the defendant No. 1, has preferred this appeal.

Pandit *Shiam Krishna Dar* and Babu *Narain Prasad Ashthana*, for the appellant.

The Hon'ble Dr. *Tej Bahadur Sapru*, Mr. *Ibn Ahmad* and Babu *Girdhari Lal Agarwala*, for the respondents.

BANERJI and TUDBALL, JJ. :—The first question which arises in this appeal is whether the appeal lies to this Court. For the decision of that question we have to determine what was the value of the subject matter of the suit in the court below. If the amount of that value was below Rs. 5,000, the appeal would not lie to this Court but lay to the court of the District Judge. The suit was brought under the following circumstances. The first defendant, who is the appellant here, holds a decree against the second defendant, the husband of the plaintiff respondent. In execution of that decree he caused the property in suit to be attached as the property of his judgement-debtor. An objection

(1) (1894) I. L. R., 17 All., 69. (2) (1905) I. L. R., 27 All., 440.
(3) (1907) I. L. R., 35 Calc., 202.

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was preferred by the plaintiff claiming the property under a sale deed alleged to have been executed in her favour on the 22nd of May, 1912. Her objection having been overruled, she brought the present suit on the 4th of January, 1913, and asked for a declaration that the property in suit "was not liable to attachment and sale in satisfaction of the amount due to defendant No. 1," and she also prayed that her right to the property be declared. She alleged the date of the cause of action to be the 4th of January, 1913. No doubt she made her husband a party to the suit, but she asked for no relief against him and did not allege any cause of action which would entitle her to sue him. Apparently her husband was only made a formal defendant to the suit. The lower court decreed her claim and the decree-holder, the defendant No. 1, has preferred this appeal. No doubt in the plaint the value of the subject matter for purposes of jurisdiction is stated to be Rs. 25,000, but this in our opinion was clearly erroneous. As we have already said, the plaintiff claims no relief against her husband and she does not allege any cause of action as against him. All that she asks for is that it be declared that the amount of the decree held by the first defendant ought not to be realized from her property, that is, from so much of it the value of which would be equivalent to the amount of the decree. It is admitted in this case that the amount of the decree is about Rs. 2,000. It is therefore clear that the object of the suit is to relieve the property from a burden to the amount of Rs. 2,000 which the decree-holder, defendant No. 1, is seeking to impose on it by attaching the property. The whole of the property is not in dispute, and under the attachment and the sale which might take place in pursuance of it, the whole property cannot be sold, but only so much of it as will be sufficient for the realization of the amount of the decree. Therefore, the value of the subject matter of the suit is the amount of the decree and not the amount of the actual value of the property or the value for which the plaintiff alleges that she purchased it. The point was decided by this Court in the case of *Dwarka Das* v. *Kameshar Prasad* (1), and the same view was adopted in *Dhan Devi* v. *Zamurrad Begam* (2). The matter was considered by their Lordships of the Privy Council

(1) (1894) I. L. R., 17 All., 69. (2) (1905) I. L. R., 27 All., 440.

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in the recent case of *Phul Kumari* v. *Ghanshyam Misra* (1). The exact point which is now before us was not in issue before their Lordships, but there are observations in the judgement which clearly support the view taken by this Court. Their Lordships say, " the value of the action must mean the value to the plaintiff. But the value of the property might quite well be Rs. 1,000 while the execution debt was Rs. 10,000. It is only if the execution debt is less than the value of the property that its amount affects the value of the suit." In the case before us the amount of the decree is below Rs. 5,000 and much below the actual value of the property. Therefore, according to the view expressed by their Lordships, the value of the suit should be regarded as the amount of the decree. That amount being less than Rs. 5,000, an appeal from the decree of the court below lay to the District Judge and not to this Court. We accordingly direct that the memorandum of appeal be returned to the appellant for presentation to the proper court. Under the circumstances we make no order as to the costs of this appeal.

Memorandum of appeal returned.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Muhammad Rafiq.

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November, 25.

SITAL PRASAD (DEFENDANT) *v.* LAL BAHADUR (PLAINTIFF) AND GOBIND PRASAD (DEFENDANT).*

Civil Procedure Code (1908), order XXIII, rule 3—Compromise—Petition of compromise filed in subsequent suit—Registration—Act No. XVI of 1908 (Indian Registration Act), section 17.

In a suit for a declaration of title to certain immovable property the plaintiff applied to the Court stating that the suit had been compromised and asking that a decree might be made under order XXIII, rule 3, of the Code of Civil Procedure.

In support of this application he filed a copy of a petition which had been presented shortly before by both parties to the Revenue Court in proceedings for mutation of names in respect of the same property as was in the dispute in the Civil Court, and which set forth that the matter before the Revenue Court had been compromised in the manner therein stated. The petition had been accepted and acted upon by the Revenue Court.

Held that the petition was evidence in the Civil Court that the matter in dispute between the parties had been adjusted out of Court, and that it did not require to be registered.

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* First Appeal No. 91 of 1914, from a decree of Murari Lal, Subordinate Judge of Cawnpore, dated the 20th of December, 1913.

(1) (1907) I. L. R., 35 Calc., 202.