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MUNNI  
KUNWAR  
v.  
MADAN  
GOPAL.

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November, 15.

courts below as also the decree of the learned Judge of this Court and decree the plaintiff's claim with costs in all courts.

*Appeal decreed.*

*Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.*

HAR PRASAD (OBJECTOR) v. MUKAND LAL (APPLICANT).<sup>\*</sup>  
*Act (Local) No. III of 1901 (United Provinces Land Revenue Act), section 111*  
*(1) (b)—Partition—Non-applicant required to file suit in civil court—Non-compliance with order—Appeal*

A Collector trying a partition case made an order under section 111 (1) (b) of the United Provinces Land Revenue Act, 1901, against the non-applicant. He failed to comply with this order, but alleged that in a civil suit between the parties to the partition case it had been decided in respect of certain non-revenue-paying property that both sides were members of a joint Hindu family. The Collector, however, overruled his objection, finding that the ruling did not apply to revenue-paying property.

*Held* that no appeal lay to the District Judge from this order.

THE facts of this case were as follows :—

One Mukand Lal presented an application in the Revenue Court against Har Prasad alleging that he was entitled to  $\frac{2}{3}$ ths of the recorded property and claiming partition. Har Prasad filed an objection that Mukand Lal's share was only one-half and the other half belonged to him. This matter having come before the Collector he made an order under section 111 of the Land Revenue Act requiring Har Prasad to bring a suit in the Civil Court within three months to determine the question. Har Prasad never brought any such suit. He alleges, however, that there was pending in the Civil Court a suit for partition brought by Mukand Lal in respect of non-revenue-paying property, and that it was decided in that suit that they constituted a joint Hindu family and were therefore on partition entitled to all the joint property half and half. After the expiry of three months, when the case again came before the Collector it was found that Har Prasad had not complied with the order. He tried to make out that the finding of the Civil Court had settled the question. The Collector made an order in which he stated that the Civil Court's decision had nothing to do with the revenue-paying property. The Collector accordingly overruled the objection which had been

<sup>\*</sup> First Appeal No. 112 of 1915, from an order of F. S. Tabor, District Judge of Saharanpur, dated the 15th of May, 1915.

filed by Har Prasad. Against this order Har Prasad filed an appeal in the District Judge's Court. The District Judge held that no appeal lay to him and returned the memorandum of appeal for presentation to the proper court.

Har Prasad thereupon appealed to the High Court.

Mr. *Nihal Chand*, for the appellant.

Dr. *Surendra Nath Sen*, for the respondent.

RICHARDS, C. J., and BANERJI, J. :—This appeal arises under the following circumstances. Mukand Lal presented an application in the Revenue Court against Har Prasad alleging that he was entitled to  $\frac{2}{3}$ ths of the recorded property and claiming partition. Har Prasad filed an objection that Mukand Lal's share was only one-half and the other half belonged to him. This matter having come before the Collector he made an order under section 111 of the Land Revenue Act requiring Har Prasad to bring a suit in the Civil Court within three months to determine the question. Har Prasad never brought any such suit. He alleges, however, that there was pending in the Civil Court a suit for partition brought by Mukand Lal in respect of non-revenue-paying property, and that it was decided in that suit that they constituted a joint Hindu family and were therefore on partition entitled to all the joint property half and half. After the expiry of three months, when the case again came before the Collector it was found that Har Prasad had not complied with the order. He tried to make out that the finding of the Civil Court had settled the question. The Collector made an order in which he stated that the Civil Court's decision had nothing to do with the revenue-paying property. The Collector accordingly overruled the objection which had been filed by Har Prasad. Against this order Har Prasad filed an appeal in the District Judge's court. The District Judge held that no appeal lay to him and returned the memorandum of appeal for presentation to the proper court. Section 111 of the Revenue Act provides that when an objection is made by a recorded co-sharer involving a question of proprietary title one of three courses is open to the Collector : he may either decline to grant the application until the question be settled by a competent court, or he may require any party to the case to institute a suit in the Civil Court within three months to settle

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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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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.