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of Criminal Procedure. The procedure is clumsy, and I hope to see it amended by a reasonable modification of the law. At present this must be taken as the settled procedure of this Court under the Code as it stands. I have no doubt that the learned Sessions Judge was right in this case. I accept his reference, and, for the reasons given by him, I set aside the convictions and sentences against Bhola and each of the other seven men named in the referring order. I acquit them of the offence charged and direct that the fines imposed upon them, if paid, be refunded.

Reference accepted. Convictions set aside.

REVISIONAL CIVIL.

Before Mr Justice Tudball and Mr. Justice Muhammad Rafiq.

MOTI LAL (PLAINTIFF) *v.* RAM NARAIN (DEFENDANT)*

1917
May, 28.

Civil Procedure Code (1908), *order XXII, rule 4—Partnership—Suit for dissolution—Death of defendant after preliminary decree—Application for substitution—Limitation.*

In a suit for dissolution of partnership, after the preliminary decree was passed, one of the defendants died. Some two years after his death the plaintiff applied for substitution of the name of the heir of the deceased defendant, and asked the court to proceed with the suit. *Held* that in the circumstances order XXII, rule 4, of the Code of Civil Procedure applied and the application was too late. *Jamnadas Chhabildas* v. *Sorabji Kharsedji* (1) followed.

ONE Moti Lal obtained a preliminary decree in a partnership case against Pirbhu Dayal and others. After this decree had been passed Pirbhu Dayal died. Some two years after his death, the plaintiff Moti Lal applied to have the name of his heir brought upon the record and asked the court to proceed with the suit. The court of first instance held that order XXII, rule 10, of the Code of Civil Procedure applied to the case and that the application was within time, and it was granted. The defendants appealed and the lower appellate court allowed the appeal and rejected the application on the finding that order XXII, rule 4, applied and that the application was beyond time The plaintiff applied in revision to the High Court.

* Civil Revision No. 201 of 1916.

(1) (1891) I. L. R., 16 Bom., 27.

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MOTI LAL v. RAM NARAIN.

The Hon'ble Munshi *Narayan Prasad Ashthana*, for the appellant.

Mr. *Nihal Chand*, for the respondent.

TUDBALL and MUHAMMAD RAFIQ, JJ. :—The facts of the case, so far as they are necessary for the purposes of this application, may be reduced to this. The present applicant obtained a preliminary decree in a partnership case against one Pirbhu Dayal and others. Pirbhu Dayal died after the preliminary decree had been passed. Some two years after his death, the plaintiff applied to have the name of his heir brought upon the record and asked the court to proceed with the suit. The heir objected on the ground that the application was barred by limitation as it ought to have been made within the period of six months from the date of the death. The court of first instance held that it was a case to which order XXII, rule 10, applied and granted the application as having been made within three years of his death. The defendants appealed. The court below has held that order XXII, rule 4, applied and that the application is barred by time. The plaintiff comes here in revision. The first plea taken before us is that if order XXII, rule 4, applied, no appeal lay to the court below. As a matter of fact the applicant went into court urging that order XXII, rule 10, applied and the court of first instance agreed with him and passed an order under that rule, and an appeal did lie from such an order. It is again argued before us as a second point that order XXII, rule 10, applies to suits like the present, and not order XXII, rule 4. It is quite clear that rule 10 applies to all other cases which are not dealt with or covered by rules 1 to 9 in order XXII. It is urged that a preliminary decree has been passed in this case and therefore rule 4 cannot apply. With this we cannot agree. In our opinion the suit was still pending. A preliminary decree does not put an end to the suit. It must be continued up to the stage of the final decree. That being so, it is clear that rule 4 covers the present case. If authority be deemed necessary for our decision, we would point to the case of *Jamnadas Chhabildas* v. *Sorabji Kharsedji* (1), which is a clear authority in point. Our attention was called to the case of *Chunni Lal* v. *Abdul Ali Khan* (2).

(1) (1891) I. L. R., 16 Bom., 27. (2) (1901) I. L. R., 23 All., 331.

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This, however, is by no means in favour of the present applicant. That was a mortgage suit to which sections 88 and 89 of the Transfer of Property Act of 1882 applied. There it was held that a decree under section 88 of the Transfer of Property Act, 1882, was only a decree *nisi* and not a final decree, and that the suit in which such a decree is passed does not terminate until an order absolute is made under section 89. Whether the law laid down there was correct or incorrect, it is clear that the law, as it now stands, since the present Code of Civil Procedure came into force, is in accordance with that decision. The suit is clearly still pending. Rule 4 of order XXII clearly does apply. The court of first instance was wrong in applying rule 10, and we therefore disallow the present application with costs.

Application dismissed.

PRIVY COUNCIL.

JADU NATH SINGH AND ANOTHER (PLAINTIFFS) *v.* THAKUR SITA RAMJI AND ANOTHER (DEFENDANTS).

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

P. C.* 1917 *April*, 24.

Hindu law—Endowment—Construction of deed of endowment—Deed contended to be invalid as being not a real dedication to idol—Appointment of members of donor's family as mutawallis—Deed held valid as creating an endowment.

The question in this appeal was as to the construction of a deed of endowment executed and registered by a Hindu on the 20th of July, 1898. In a suit after his death to set aside the deed, the appellants, as next reversioners, claimed that no valid endowment had been created, or was intended to be created by it.

Their Lordships in dismissing the appeal distinguished the cases of *Sonatun Bysack* v *Jugguttsoondree Dossee* (1) and *Ashutosh Dutt* v. *Doorga Churn Chatterji* (2), cited in support of the appellants' contention, on the ground that, although nominally there was a gift to the idol, that gift was so cut down by subsequent disposition that there was no gift to the idol such as to make the property pass as an absolute and entire interest in its favour.

Held that there was no such cutting down in the present case. There was in the beginning a clear expression of an intention to apply the whole estate for the benefit of the idol and the temple, and the rest of the disposition

* *Present*:—Viscount HALDANE, Lord ATKINSON, Sir JOHN EDGE, and Mr. AMEER ALI.

(1) (1859) 8 Moo., I. A., 66.

(2) (1879) I. L. R., 5 Calc., 438; L. R., 6 I. A., 182.