

administered poison, which resulted in the death of seven persons. In my opinion this is gross and criminal negligence and the conviction was a proper one. There remains the question of sentence. Keeping in view the result of the applicant's carelessness it is impossible to say that the sentence of three months' simple imprisonment is too heavy. The result is that I disallow the application.

Application dismissed.

APPELLATE CIVIL.

Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.

FARHAT-UN-NISSA BIBI AND OTHERS (PLAINTIFFS) v. SUNDARI PRASAD AND OTHERS (DEFENDANTS).*

Civil Procedure Code (1908), section 70—Execution of decree—Ancestral property—Sale held by collector and confirmed by commissioner—Suit in Civil Court to set aside sale—Rules framed by Local Government.

Where a sale of ancestral property held by a collector in accordance with rules framed by the Local Government under section 70 of the Code of Civil Procedure, 1908, has been duly confirmed, no suit will lie in a Civil Court for the purpose of setting aside such sale.

THIS was a suit brought in a Civil Court to set aside a sale of ancestral property which had been held by the collector in accordance with rules framed by the Local Government under section 70 of the Code of Civil Procedure and had been duly confirmed by the Commissioner. The facts of the case sufficiently appear from the judgment of the Court.

Maulvi Iqbal Ahmad, for the appellants.

Munshi Gokul Prasad and Munshi Rudha Mohan, for the respondents.

TUDBALL, J.:—This is a plaintiffs' first appeal. A decree for sale of ancestral property belonging to the plaintiffs was passed by the Civil Court and the execution of that decree was transferred to the court of the Collector under the rules made by the Local Government under section 70 of the Code of Civil Procedure. The property was sold by auction and the sale was set aside by the Collector, but on appeal by the opposite party to

* First Appeal No. 172 of 1917, from a decree of G. O. Allen, Subordinate Judge of Jaunpur, dated the 2nd of April, 1917.

1920

EMPEROR
v.
DR SOUZA.

1920
January, 13

1920

PARHAT-UN-
NISSA BIBI
v.
SUNDARI
PRASAD.

the Commissioner the Collector's order was set aside and the sale was confirmed. The Commissioner's order was appealed to the Board of Revenue, but the appeal was dismissed. Thereupon the plaintiff brought the present suit and asked for a declaration that the sale made on the 20th of August, 1914, was fraudulent and null and void and ineffectual according to law. The court below has dismissed the plaintiffs' suit on the ground that, under the rules made by the Local Government, no suit to set aside an order made under these rules can be brought by any person against whom such order has been made. The rule referred to is rule 32 of the rules made by the Local Government in the last clause. The position taken up by the appellants before us, to put it simply, is that the order passed by the Revenue Courts confirming a sale of this description has not that finality which a similar order would have if it had been passed by the ordinary Civil Court, that the Local Government has no power to make any such rules under section 70 of the Code of Civil Procedure as to give finality to the Revenue Court's order confirming the sale. It seems to us that the appeal is bound to fail. In cases where ancestral property is involved, the decree, under the rules made by the Local Government under section 70, clause (1) (a), must be transmitted to the court of the Collector for execution. Under sub-clause (b) of the same section, the Local Government has power to confer upon the Collector or any gazetted subordinate of the Collector all or any of the powers which the court might exercise in the execution of the decree if the execution thereof had not been transferred to the Collector. The Local Government has made such rules, and it is, therefore, clear that it has conferred upon the Collector the power of passing an order of the same nature as the Civil Court would have passed and could have passed under order XXI, rule 62; that is to say, an order which is final and absolute and cannot be questioned by a subsequent civil suit. Under sub-clause (c) of section 70, clause (1), the Local Government has power to arrange for appeals from the orders passed by collectors under the rules framed by the Local Government; so that the appellate orders passed by the revenue authorities have the same finality as the Collector's order would have had if it had been upheld.

It is obvious to us that the law contemplated that the full powers exerciseable by the Civil Court in execution of a decree should be transferred to the Collector in certain cases, and, as we have pointed out above, one of the powers of the Civil Court is to pass an order which is final and cannot be questioned by a regular suit under order XXI, rule 92, clauses (1), (2) and (3). In our opinion there is no force in this appeal. We therefore dismiss it with costs.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

SHIAM LAL (PETITIONER) v. PARSHOTTAM DAS (OPPOSITE PARTY).^{*}
Civil Procedure Code (1908), schedule II, paragraphs 14, 15 and 20 - Arbitration - Award - Ground for remitting or setting aside an award - Arithmetical error.

It is not a ground for remitting an award on matter referred to arbitration or for setting aside an award that the arbitrator has made a mistake in arithmetic and apparently unintentionally has awarded a larger sum of money to be paid by one party to the other than he would have awarded if his attention had been directed to the mistake.

Nor does the decision of an arbitrator appointed to divide family property that a certain debt is due from the family to a person not a party to the reference amount to the determination of a matter not referred to arbitration, and in any case such a decision, so far as it might be considered as an award in favour of the creditor, would be entirely separable from the rest of the award. *Allarakhia Shivji v. Jehangir Hormasji*, (1) and *Mustafa Khan v. Phulja Bibi* (2) referred to.

THE facts of this case are fully stated in the judgment of the Court.

Munshi Durga Prasad (for Mr. B. B. O'Connor) and Dr. Surendro Nath Sen, for the appellants:—

There is no illegality apparent on the face of the award. It is only an arithmetical error of calculation due to a confusion in the arbitrator's mind. This can be set right and the award made a rule of court. Paragraphs 14, 15 and 21 of the second schedule to the Code of Civil Procedure 1908, lay down the circumstances under which a private award can or cannot be filed. No such objections exist in the present case. The lower

^{*} First Appeal No. 83 of 1919, from an order of P. K. Roy, Additional Subordinate Judge of Meerut, dated the 12th of April, 1919.

(1) (1879) 10 Bom., H. C. Rep., 891. (2) (1905) I. L. Rep., 27 All., 526

1920

FARHAT-UN-
 NISSA BIHI
 v.
 SUNDARI
 PRASAD.

1920

January, 1920.