

1891 do not think that this is the correct interpretation of the law. Section 20 of the Civil Courts Act is intended only to define the Court to which an appeal lies from a decree or order of a District Judge, but it is not intended to define the right of appeal or the class of decrees or orders from which appeals shall lie. In support of our view that no appeal lies from an order under section 18 of Act XX of 1863, we may refer to the case of *Kusem Ali v. Asim Ali Khan* (1), and also to a Full Bench decision of the Madras High Court, *Venkateswara, In re* (2).

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In our opinion, therefore, Act XX of 1863 was not applicable to this case upon the findings arrived at by the Court below, and the proceedings had in this case are therefore contrary to law and void.

We are further of opinion that the decree made in this case is not one that comes within the scope of section 14 of Act XX of 1863.

We accordingly set aside the decree made by the Court below, and dismiss the suit with costs of both Courts.

*Appeal allowed and suit dismissed.*

H. T. H.

*Before Sir W. Comer Petheram, Knight, Chief Justice, and  
Mr. Justice Banerjee.*

1891 TIKUM SINGH AND OTHERS (DEFENDANTS NOS. 1 TO 3) v. SHEO  
Dec. 11. RAM SINGH (PLAINTIFF) AND SHEO PERSHAD BHAGUT  
(DEFENDANT NO. 4).\*

*Attachment of property deposited in, or in the custody of, a Court—Priority  
—Title to property in custody of a Court—Code of Civil Procedure  
—Act XIV of 1882, ss. 272 and 273—283—Suit to set aside order  
under proviso to s. 272, Code of Civil Procedure.*

A suit will lie to set aside an order such as is contemplated by the proviso to section 272 of the Code of Civil Procedure, that is, an order determining any question of title or priority as between the decree-holder and any other person in respect of money in deposit in a Court of Justice.

\* Appeal from Appellate Decree No. 1771 of 1890 against the decree of Babu Jadu Nath Das, Subordinate Judge of Patna, dated the 13th of August 1890, reversing the decree of Babu Purna Chunder Banerjee, Munsif of Patna, dated the 19th of September 1889.

(1) I. L. R., 18 Cal., 332.

(2) I. L. R., 10 Mad., 98.

The mode of investigation and the nature of the order to be made under section 272, and the extent to which such an order is final, are provided for in ss. 278—283 of the Code of Civil Procedure.

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SHIBO RAM  
SINGH.

THIS was a suit brought under the provisions of section 283 of the Code of Civil Procedure, praying for a declaration of the plaintiff's right to a certain sum of Rs. 501-14, realized under the plaintiff's decree against defendant No. 4, which sum the plaintiff alleged had been drawn out of Court by defendants Nos. 1, 2 and 3, after attachment of the same by them as monies belonging to their judgment-debtor, defendant No. 4, in execution of their decrees against defendant No. 4, and praying for recovery of the same with interest and costs.

The facts were shortly as follows:—By a kobala or deed of sale, dated the 8th June 1887, the defendant No. 4 sold to the plaintiff the arrears of rent for the years 1291 to 1293 due to him by the tenants of mauza Dedour, in which mauza he held a share under defendants Nos. 1, 2 and 3.

The plaintiff brought suits against the tenants and recovered decrees on the 5th March 1888. Upon execution of these decrees the sum of Rs. 505 was realized by sale of the judgment-debtors' properties, out of which sum the plaintiff claimed Rs. 501-14. The defendants Nos. 1, 2 and 3 had, however, a decree for rent against the defendant No. 4, in execution of which they attached the amount realized by the plaintiff under his decrees. The plaintiff preferred a claim under section 278 of the Code in respect of the sum of Rs. 501-14, but the claim was disallowed by the executing Court upon the ground that the claimant was only a benamidar of the defendant No. 4, and that the purchase of the 8th June 1887 was not a *bond fide* transaction for value.

The plaintiff then brought this suit, asserting his right to the sum of Rs. 501-14, and alleging that he was not the benamidar of the defendant No. 4, and that the kobala, dated the 8th June 1887, was executed *bond fide* and for valuable consideration. The Court of first instance held that the *bond fides* of the sale had not been clearly established, and dismissed the plaintiff's suit. The lower Appellate Court reversed that decision, and gave the plaintiff a decree for Rs. 434-10, being the amount taken out of

1891 Court by the defendants Nos. 1, 2 and 3. These defendants  
 appealed to the High Court.

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Dr. *Rash Behari Ghose* appeared for the appellants.

*Babu Bhuban Mohan Das* appeared for the respondents.

Upon the hearing of the appeal the only question argued was whether a regular suit would lie in the present case, the question being as to the title or priority arising between the parties who claimed to be interested in the money deposited in Court, and as such being a question within the proviso to section 272 of the Code of Civil Procedure. [See *Gopee Nath Acharje v. Achcha Bibee* (1).]

The judgment of the Court (PETHERAM, C.J., and BANERJEE, J.) was delivered by—

BANERJEE, J.—The only question raised in this case is whether a regular suit would lie for setting aside an order such as is contemplated by the proviso to section 272 of the Code of Civil Procedure, that is, an order determining any question of title or priority as between the decree-holder and any other person in respect of money in deposit in a court of justice.

It is contended for the appellant that no such suit would lie, as there is no provision in the Code of Civil Procedure which says that an order of this kind is liable to be questioned by a regular suit, and that the intention of section 272 is to make the Court, in whose custody the money or property in dispute is, the only Court competent to determine the question.

We do not think this contention is sound. Section 272 is one of a group of sections commencing with section 272 and ending with section 285; and all that the proviso to section 272 intends, when declaring that the Court in which the property or money is deposited shall be the Court that shall determine any question of title or priority, is to make that Court the tribunal for investigating claims, as distinguished from the Court which issues the attachment in execution of decree, which is the Court that in ordinary cases has to investigate and decide upon claims. But the mode of investigation, the nature of the order to be made, and the

(1) I. L. R., 7 Cal., 553.

extent to which such an order is final are, we think, provided for in sections 278 to 283. There does not appear to us to be any reason why greater finality should be given to an order such as is contemplated in the proviso to section 272 than is given to an order in any other claim case. The point taken before us therefore fails, and this appeal must be dismissed with costs.

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*Appeal dismissed.*


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FULL BENCH.

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*Before Sir W. Comer Petheram, Knight, Chief Justice, Mr. Justice  
Prinsep, Mr. Justice Wilson, Mr. Justice Pigot, and  
Mr. Justice Ghose.*

MATUNGINI GUPTA (PLAINTIFF) *v.* RAM RUTTON ROY  
AND OTHERS (DEFENDANTS).\*

1891  
Nov. 24.

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*Hindu widow, re-marriage of—Marriage of Hindu widow—Property inherited by Hindu widow from her first husband, forfeiture of—Hindoo Widow's Marriage Act (XV of 1856), ss. 1, 2—Act III of 1872, s. 10.*

A Hindu widow inherited the property of her husband, taking therein the estate of a Hindu widow. She afterwards married a second husband, not a Hindu, in the form provided by Act III of 1872, having first made a declaration, as required by section 10 of that Act, that she was not a Hindu.

*Held*, by the majority of the FULL BENCH (PRINSEP, J., dissenting) that by her second marriage she forfeited her interest in her first husband's estate in favour of the next heir, all rights which any widow may have in her deceased husband's property by inheritance to her husband being expressly determined by section 2 of the Hindu Widow's Marriage Act (XV of 1856) upon her re-marriage.

*Gopal Singh v. Dhungazee* (1) overruled.

PRINSEP, J.—Section 2 of Act XV of 1856 does not apply to all Hindu widows re-marrying, but only to Hindu widows re-marrying as Hindus under Hindu law as provided by the Act.

THIS suit was brought by one Matungini Gupta, the daughter of Bhugwan Chunder Roy, deceased, to recover certain properties

\* Appeal from Appellate Decree No. 312 of 1890 against the decree of the District Judge of Dacca, dated the 2nd December 1889, reversing the decree of the Second Subordinate Judge of that district, dated the 30th June 1888.