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cases in which we have no authority to interfere with the effective orders passed by the courts. We are unable to find that this Court has any authority in such circumstances. This view was taken by one of us in Criminal Reference *Chattara* v. *Basdeo Sahai and others*, decided on the 4th of October, 1920. If it be held that the grievances of persons who are unjustly criticized by courts of law in circumstances which obviate the effective orders of the courts coming before superior courts in appeal or revision, are so great as to require a special enactment for their protection, the matter is one for the consideration of the Legislature, but as the law stands, we are satisfied that we have no authority. We, therefore, dismiss these applications.

Applications dismissed.

APPELLATE CIVIL.

Before Mr. Justice Muhammad Rafiq and Mr. Justice Lindsay.

JIWA RAM (PLAINTIFF) *v.* NAND RAM (DEFENDANT).*

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Civil Procedure Code (1908), *sections* 141 *and* 144—*Proceedings for restitution of benefits derived from a decree reversed on appeal—Application dismissed for default but subsequently restored—Execution of decree.*

Held that, proceedings under section 144 of the Code of Civil Procedure not being proceedings in execution, the provisions of section 141 of the Code apply to them.

Somasundaram Pillai v. *Chokkalingam Pillai* (1) dissented from.

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

Babu *Piari Lal Banerji*, for the appellant.

Munshi *Panna Lal*, for the respondent.

MUHAMMAD RAFIQ and LINDSAY, JJ. :—This is an appeal against an order of the Subordinate Judge of Aligarh, passed in certain proceedings taken under section 144 of the Code of Civil Procedure for the purpose of obtaining restitution.

The facts are as follows :—One Gobardhan Das died in the month of August, 1900, leaving two widows, Musammat Rupo and Musammat Singhari.

* First Appeal No. 350 of 1919, from a decree of Ali Ausat, Subordinate Judge of Aligarh, dated the 14th of June, 1919.

(1) (1916) I. L. R., 40 Mad., 780.

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The latter made a *waqf* of a certain portion of the property which had belonged to her husband, in favour of a temple, and appointed Nand Ram, the respondent in the present appeal, the trustee.

After the death of Musammat Singhari, a suit was brought against Nand Ram by the surviving widow Musammat Rupo and one Jiwa Ram, who, it was alleged, was her adopted son.

This suit was successful and a decree was passed in favour of Musammat Rupo and Jiwa Ram in the month of February, 1910, and in execution of this decree Rupo and Jiwa Ram obtained possession of the property on the 4th of May, 1910.

There was an appeal against this decree to the High Court, and ultimately the decision of the first court was set aside and the case was remanded for decision on the merits.

After the remand the parties agreed to arbitration; and on the 21st of March, 1912, the arbitrator delivered an award, upon which a decree was subsequently passed by the Subordinate Judge.

The effect of the award was to declare that a portion of the property, once belonging to Gobardhan Das, had been effectively dedicated as *waqf*. The arbitrator also held that Jiwa Ram had been duly adopted by Musammat Rupo.

After this decree was passed Nand Ram on the 20th of April, 1913, was put in possession of that portion of the property which had been found to be validly dedicated to the temple.

Nand Ram then applied for the recovery of mesne profits from the 4th of May, 1910, till the 20th of April, 1913.

A preliminary decree was passed by the Subordinate Judge on the 22nd of December, 1914, by which he awarded a sum of Rs. 2,624-5-5 to Nand Ram. This decree was against both Musammat Rupo and Jiwa Ram.

An appeal was filed in the court of the District Judge. He upheld the decision of the first court so far as the amount was concerned, but he passed an order discharging Jiwa Ram from liability.

A second appeal was brought to this Court, and in the result it was held that Musammat Rupo alone was liable for mesne profits from the 4th of May, 1910, till the 21st of March, 1912.

It was further declared that Musammat Rupo and Jiwa Ram were jointly liable for mesne profits from the 22nd of March, 1912, to the 20th of April, 1913.

The High Court directed an inquiry to be held in order that these liabilities might be ascertained. In the order directing investigation nothing was said as to the court in which the inquiry was to be held. The case went down to the District court and was passed on to the court of the Subordinate Judge. The Subordinate Judge has now concluded the inquiry and given a decree in which he declares Jiwa Ram and Musammat Rupo jointly liable for a sum of Rs. 708-3-2, while Musammat Rupo is declared to be solely liable for the sum of Rs. 1,691-3-0. It is to be mentioned here that Musammat Rupo died on the 28th of July, 1918, while the inquiry in the court of the Subordinate Judge was still pending.

Jiwa Ram now comes here in appeal and three points have been raised and argued on his behalf. The first point taken is that the order of the Subordinate Judge is *ultra vires*, inasmuch as he had no jurisdiction to make the inquiry and pass the decree now complained against. It is pointed out that when the order of remand was made by this Court, the case ought to have been taken up by the District Judge against whose decision the appeal had been filed here.

This point has not been pressed, and we may say that, in any case, we should not be disposed to entertain it. It is purely a technical plea, and in view of the circumstances of the case, and in particular, having regard to the long period during which this dispute between the parties has remained unsettled, we should be very reluctant to interfere on a ground like this. The learned Judge has conducted the inquiry very carefully and has discussed the merits of the case in full detail.

The next point taken is that the order of the Subordinate Judge is bad for the following reasons :—

It appears that after Nand Ram made an application for restitution under section 144 of the Code of Civil Procedure, he made a default in appearance. The result of this was that an order was passed dismissing his claim.

Subsequently Nand Ram made an application for restoration. A date was fixed for the hearing of this application and, on that

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date, Nand Ram was again absent and the application for restoration was dismissed for default.

Nand Ram made a second application asking that the order of dismissal might be set aside, and, eventually, with the consent of the other side, an order was passed setting aside the order of dismissal and directing that the inquiry should proceed. In the course of those proceedings Jiwa Ram's counsel informed the court that he would not oppose the application for restoration, provided that he were given costs. His statement was that his client had been much harassed by the proceedings and was desirous of having the matter settled once for all. The learned Judge, in setting aside the order of dismissal, awarded costs to Jiwa Ram's counsel, and thereupon the case proceeded, and was terminated by the decree which is now under appeal.

The argument for the appellant here is that in proceedings taken under section 144 it was not competent for the learned Subordinate Judge to pass any order for restoration. It is argued that the terms of section 141 of the Code of Civil Procedure, by which it is provided that the procedure laid down in the Code in regard to suits shall be followed as far as it can be made applicable in all proceedings in any court of civil jurisdiction, do not apply to proceedings under section 144 of the Code. The contention is that an application for restitution made under this latter section is a proceeding in execution of decree and that, consequently, the provisions of section 141 do not apply.

It has indeed been laid down by high authority that the provisions of section 141 do not apply to proceedings relating to the execution of a decree.

It appears to us, however, that proceedings under section 144 of the Code cannot properly be described as proceedings in execution of a decree. We have been referred to the judgment of the Madras High Court in *Somasundaram Pillai* v. *Shokalingam Pillai*(1), in which it has been held that proceedings under section 144 are execution proceedings, but, with all respect, we are unable to agree with this.

A comparison of section 144 of the present Code and section 583 of the Code of 1882 seems to make the matter clear.

(1) (1916) I. L. R., 40 Mad., 780.

Under the old Code it was provided by the section just mentioned that when a party entitled to any benefit (by way of restitution or otherwise) under a decree passed in appeal desired to obtain execution of the same, he was to apply to the court which passed the decree against which the appeal was preferred, and it was directed that such court should proceed to execute the decree passed in appeal according to the rules prescribed for the execution of decrees in suits.

On the language of section 583 it seems fairly clear that the proceedings for obtaining restitution were, under the old Code, proceedings in execution of decree.

The language of section 144, however, is very different, and we now find no mention regarding any application to be made for the purpose of executing the decree of the appellate court, nor do we find any direction laying down that such proceedings are to be regulated by the rules prescribed for the execution of decrees in suits.

The language of section 144 is very wide, and it is provided that for the purposes of making restitution, the court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits which are properly consequential on the variation or reversal which has been made in respect of the first court's decree. It may well be doubted whether a court which was merely executing a decree could be deemed to be invested with such extensive powers, for it seems to us that under section 144 a court is enabled to pass orders and to make inquiries which might be altogether beyond the scope of the appellate court's decree. Be that as it may, however, we are satisfied that, in view of the difference of the language used in the present section 144 and the former section 583, we are justified in coming to the conclusion that proceedings under section 144 are not proceedings in execution of decree. In this view we hold that the terms of section 141 do apply to such proceedings, and that in the present case it was competent to the learned Subordinate Judge to set aside the order of dismissal for default and to restore the application.

The only other point which has been argued before us is with regard to the form of the lower court's decree. We have

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already mentioned that Musammat Rupo died on the 28th of July, 1918, while these proceedings were pending. It is said that after Rupo's death no formal steps were taken to make Musammat Rupo's legal representative a party to the record.

If there is any legal representative of Musammat Rupo, he can be no other than Jiwa Ram, and it is an admitted fact that at the time Musammat Rupo died, Jiwa Ram was a party to the record. In the circumstances, we are unable to hold that, because there was any omission to take formal steps to have it declared that Jiwa Ram was for the purpose of these proceedings the legal representative of Musammat Rupo, the order of the court below was bad.

A further point is taken to which we must now refer. The decree prepared by the Subordinate Judge, on the 10th of July, 1919, directs that Rs. 783-3-2 shall be paid by Musammat Rupo and Jiwa Ram jointly, and that a further sum of Rs. 1,691-3-0 was payable by Musammat Rupo alone.

Obviously, as the facts stood at the time when the decree was prepared, the form of the decree is wrong, for, as we have pointed out, Musammat Rupo had died about a year before.

It is further argued in the circumstances that, if we hold Jiwa Ram to be the legal representative of Musammat Rupo, we ought also to modify the decree of the court below so as to make it clear that Jiwa Ram is not personally responsible for the sum of Rs. 1,691-3-0, which the decree declares to be payable by Rupo. It is said that we ought to limit the liability of Jiwa Ram in respect of this sum to any assets of Musammat Rupo which have come to his hands.

At first sight this argument appears to be a reasonable one; but we have to examine the facts a little more closely. In the first place, it is now absolutely settled that Jiwa Ram was validly adopted by Musammat Rupo to her husband Gobardhan Das. That was declared by the award of the arbitrators and the decree which was passed thereon. If Jiwa Ram has been validly adopted by Gobardhan's widow, it follows that the title of the widow was altogether ousted, and Jiwa Ram takes the whole inheritance left by his adoptive father. Further, it is no longer disputed that in March, 1910, when possession was taken after Musammat Rupo and Nand Ram had obtained a decree,

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this possession was delivered both to Jiwa Ram and Musammat Rupo. It follows, therefore, that Jiwa Ram's possession continued from the 4th of May, 1910, till the 20th of April, 1913, when Nand Ram was restored to possession of that portion of the property which was found to be *waqf*.

Such being the state of things, we do not see why the liability of Jiwa Ram *qua* this sum of Rs. 1,691-3-0 should be limited in the manner suggested. He is the adopted son of Gobardhan Das and is the owner of the estate. He represents the estate in its entirety; and in this view of the facts we think that in the present proceedings Jiwa Ram should also be made liable for the sum of Rs. 1,691-3-0 without any limitation of his liability. In other words, Jiwa Ram's liability to pay this sum is not dependent upon any assets which he has taken from Musammat Rupo, if indeed he has taken any assets from her at all.

The result, therefore, is that the appellant's case fails. We dismiss the appeal with costs to respondents. We direct, however, that the decree be amended so as to make it clear that the total sum awarded is payable by Jiwa Ram, appellant, to the respondent Nand Ram.

Appeal dismissed.

Before Mr. Justice Piggott and Mr. Justice Stuart.

MUBARAK FATIMA (PLAINTIFF) *v.* MUHAMMAD QULI KHAN (DEFENDANT).*

1922
February, 22.

Act (Local) No. II of 1901 (*Agra Tenancy Act*), *section* 201—*Evidence—Presumption—Suit for profits—Alteration in revenue records as to extent of plaintiff's share during the period covered by the suit.*

Where, in a suit for profits, it is found that there has been an alteration in the revenue record prior to the institution of the suit but made during the period for which profits are claimed, the duty of the court must be to consider the order by which the alteration was made and to give effect to the intention of the said order. If, for instance, a plaintiff was the recorded proprietor of an eight anna share in a mahal during the first year of the period in respect of

* Second Appeal No. 880 of 1920, from a decree of Kshirod Gopal Banerji, Additional Judge of Bareilly, dated the 10th of April, 1920, confirming a decree of Ibrahim Husain, Assistant Collector, First Class of Bareilly, dated the 17th of December, 1919.