

power to do so, and in the exercise of the revisional jurisdiction of this Court I hereby set aside the orders rejecting the appeals of the four persons mentioned above, and direct the learned Judge to rehear the appeals after giving them an opportunity of appearing by counsel.

1925  
EMPEROR  
v.  
MEWA  
RAM.

## APPELLATE CIVIL.

Before Mr. Justice Lindsay and Mr. Justice Kanhaiya Lal.

1925  
July, 15.

NARAIN DAS (PLAINTIFF) v. RAM CHANDAR AND  
ANOTHER (DEPENDANTS).\*

*Civil Procedure Code, section 66; order XXI, rules 92 and 94—Execution of decrec—Procedure appropriate to execution wrongly applied to a sale held by a receiver under the authority of the court—Suit against certified purchaser.*

Neither section 66 nor order XXI of the Code of Civil Procedure have any application to a sale of partnership property in the hands of a receiver held by the receiver with the sanction of the court at a time when there existed a preliminary decree for dissolution of partnership, but no final decree had yet been made. *Golam Hossein Cassim Ariff v. Fatima Begum* (1) and *Parrathammal v. Chokkalinga Chetty* (2), referred to.

THE facts of this case were as follows:—

In a suit for dissolution of partnership and for the taking of accounts brought by one Ram Chandar, son of Kanhaiya Lal and his minor son Ragho Mal against Chhajju Mal and others, a receiver was appointed to take charge of the partnership property. A preliminary decree was then drawn up in the manner indicated by order XX, rule 15, of the Code of Civil Procedure declaring the rights of the parties and giving directions as to how the property

\* First Appeal No. 234 of 1922, from a decree of Har Govind Baijal, Subordinate Judge of Muzaffarnagar at Meerut, dated the 27th of February, 1922.

(1) (1910) 16 C.W.N., 394.

(2) (1917) I.L.R., 41 Mad., 241.

1925

NARAIN  
DAS  
v.  
RAM  
CHANDAR.

was to be realized and administered. After the preliminary decree had been passed the receiver brought it to the notice of the court that there were certain debts on which interest was running up, and that it might be advisable to sell some of the partnership property and get rid of these debts. The court accordingly authorized the receiver to sell whatever property he thought necessary for this purpose. Accordingly the receiver sold, amongst other items, a shop situated in Mandavi Ghalla in the city of Meerut, and it was purchased by one Ram Chandar, son of Khem Chand. The receiver asked the court to confirm the sale, and, in a proceeding dated the 7th of December, 1914, the court passed an order, purporting to be under order XXI, rule 92(1) of the Code of Civil Procedure, confirming the sale in favour of Ram Chandar, son of Khem Chand. Later on, a certificate was issued under order XXI, rule 94, to Ram Chandar.

The present plaintiff, Lala Narain Lal *alias* Ram Dayal, then sued for the ejection of Ram Chandar, son of Kanhaiya Lal. The plaintiff asserted that the shop had been purchased from the receiver by his own brother really on his behalf, being the guardian of the plaintiff who was then a minor. The defendant pleaded that the purchase by Ram Chandar, son of Khem Chand, had been made on his (the defendant's) behalf and insisted that this Ram Chandar should be made a party to the suit, and this was done and the suit proceeded. The defence put forward was that—a sale certificate having issued to Ram Chandar, son of Khem Chand—the suit was barred by the provisions of section 66 of the Code of Civil Procedure. The court of first instance accepted this contention and therefore dismissed the plaintiff's suit. The plaintiff appealed to the High Court, where the same point was raised.

Babu *Piari Lal Banerji*, for the appellant.

Babu *Harendra Krishna Makerji* and Dr. *Surendra Nath Sen*, for the respondents.

1925

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 NARAIN  
DAS  
RAM  
CHANDAR.

The judgement of the Court (LINDSAY and KANHAIYA LAL, JJ.), after stating the facts as above, thus continued :—

We have it, therefore, that the sale to Ram Chandar, son of Khem Chand, defendant No. 2 in this suit, was a sale by a receiver which took place in the circumstances to which we have referred, and we do not see how it is possible to apply the provisions of order XXI to a sale of this kind. There certainly was no sale in execution of a decree, and it seems to us that section 66 of the Code refers to a case where there has been a sale in execution of a decree. Part II of the Code of Civil Procedure, in which section 66 is to be found, relates to execution and order XXI also relates to the execution of decrees and orders.

It has been argued before us that we ought to treat this sale as having been made in the execution of a decree because it was made under directions which were contained in the preliminary decree. We do not, however, think that that argument is sustainable. A preliminary decree is not capable of execution. Further, we do not see how it is possible to describe this sale as being a sale in execution either of a decree or order. It is not, as we have said, a sale in execution of a decree nor is it a sale in pursuance of an "order" as defined in section 2(14) of the Code of Civil Procedure. "Order" means the formal expression of any decision of a civil court which is not a decree, but when the Subordinate Judge, in the course of the proceedings in suit No. 485 of 1911, gave authority to the receiver to sell the property, he was not issuing any order in this

1925

NARAIN  
DAS  
v.  
RAM  
CHANDAR.

sense. He was not deciding anything between the parties to the case. He was simply giving a direction to the receiver to dispose of the property for the benefit of all the parties to the suit. We are satisfied, therefore, that this sale was not carried out in pursuance of any decree or order as defined above. The learned counsel for the appellant has referred us to a case which seems to be in point, *Golam Hossein Cassim Ariff v. Fatima Begum* (1). The learned Judge in that case pointed out that a sale by a receiver was not a sale by the court but a sale under the court and that in such cases the court does not grant a sale certificate nor does it confirm the sale. The learned Judge differed from the previous decision of a single Judge of the same court to be found in *Minatoonnessa Bibee v. Khatoonnessa Bibee* (2). We may also refer to another case to be found in *Parvathammal v. Chokkalingu Chetty* (3), which supports the argument of the learned counsel for the appellant. There it was held that an order under section 34 of the Guardians and Wards Act directing a guardian to pay a sum of money out of his ward's estate for the marriage expenses of a person dependent on his ward is neither a decree nor an order executable as a decree under the Code of Civil Procedure. The learned Judges referred to the definition of the term "order" in section 2(14) of the Code of Civil Procedure.

We hold, therefore, that in the present suit the defence cannot be put forward that the sale certificate which was issued to Ram Chandar, defendant No. 2, is a bar to the maintenance of the present suit. The fact is that had the proper procedure been observed there would neither have been an order confirming the sale nor any certificate issued under the provisions

(1) (1910) 16 C.W.N., 394.

(2) (1894) I.L.R., 21 Calc., 479.

(3) (1917) I.L.R., 41 Mad., 241.

of order XXI, rule 94. The procedure which was adopted was out of order. We, therefore, allow the appeal, set aside the decree of the court below and send the case back to the Subordinate Judge of Muzaffarnagar for disposal on the merits. Costs here and hitherto will abide the result.

1925.

NARAIN  
DAS  
v.  
RAM  
CHANDAR.

*Appeal allowed.*

### APPELLATE CIVIL.

*Before Mr. Justice Lindsay and Mr. Justice Sulaiman.*

BAKHTAWAR (DEFENDANT) v. SUNDAR LAL AND  
OTHERS (PLAINTIFFS).\*

1925,  
July, 21.

Act No. XVI of 1908 (*Indian Registration Act*), section 17(b)  
—Registration—Document in form of a petition to a  
court reciting the fact of a previous family settlement.

*Held* that a document, in the form of a petition to a court of revenue which recited that the parties had already composed their differences and that the property in respect of which mutation of names was sought should be entered in the names of the parties in certain specified proportions, but which did not purport to transfer any property from one party to the other nor to create any fresh title, was not a document which required to be registered. *Satrohan Lal v. Nageshwar Prasad (1) and Baldeo Singh v. Udal Singh (2)*, referred to.

The facts of this case were as follows:—*D*, a Hindu, died leaving his widow *S*, who succeeded to his property, and his daughter *K*. After the death of *S*, *B* applied in the revenue court for mutation of names, claiming as grandson of *D*'s brother and also as adopted son of *D*. This claim was opposed by the daughter *K*. The contestants eventually compromised their

\* Second Appeal No. 1528 of 1923, from a decree of P. C. Plowden, District Judge of Meerut, dated the 28th of September, 1923, confirming a decree of Raj Rajeshwari Sahai, Subordinate Judge of Meerut, dated the 17th of February, 1923.

(1) (1916) 19 Oudh Cases, 75.

(2) (1920) I.L.R., 43 All., 1.