

1928

July, 20.

REVISIONAL CIVIL.

*Before Mr. Justice Mukerji.*KARIMULLAH (APPLICANT) *v.* RAMESHWAR PRASAD (OPPOSITE PARTY).*

Act No. XII of 1887 (Bengal, N.-W. P. and Assam Civil Courts Act), section 22—Transfer of appeal—Jurisdiction—Criminal Procedure Code, section 476—Munsif's order in proceedings under section 476—Appeal transferred to Subordinate Judge.

A District Judge is competent, under section 22 of the Bengal, N.-W. P. and Assam Civil Courts Act, to transfer to a Subordinate Judge an appeal from an order passed by a Munsif in proceedings under section 476 of the Code of Criminal Procedure.

THE facts of the case are fully set forth in the judgment of the Court.

Mr. A. M. Khwaja and Munshi Har Krishna Sahai, for the applicant.

Maulvi Iqbal Ahmad and Munshi Shambhu Nath Seth, for the opposite party.

MUKERJI, J. :—The only point urged in this application is whether the court below had jurisdiction to hear the appeal.

It appears that the opposite party, Rameshwar Prasad, brought a suit on a bond for the recovery of a certain amount of money against Karimullah and others. Karimullah is the applicant in this Court. It was found that Karimullah had paid up a good deal of the amount claimed and the claim of Rameshwar Prasad was excessive. At the instance of Karimullah, the Munsif directed the prosecution of Rameshwar under section 476 of the Code of Criminal Procedure, it being held by him that Rameshwar was, *prima facie*, guilty of the offences under

*Civil Revision No. 107 of 1928.

sections 209 and 210 of the Indian Penal Code. Rameshwar filed an appeal to the District Judge and the District Judge transferred the appeal to a Subordinate Judge. The Subordinate Judge heard the case and held that the Munsif's order directing the prosecution was not justified. He ordered the revocation of the complaint.

Mr. *Khwaja* has argued that the District Judge had no jurisdiction to transfer the case to the Subordinate Judge and he has cited two Calcutta cases.

So far as this case is concerned, it is firmly established now that a court exercising jurisdiction under section 476 of the Code of Criminal Procedure does not cease to be a civil court. The proceedings taken by the court are of a civil nature, although not covered by the Code of Civil Procedure. It has, therefore, been held that a revision can lie only under section 115 of the Code of Civil Procedure, and section 439 of the Code of Criminal Procedure has no application.

An appeal is provided by the Criminal Procedure Code, section 476B, against an order passed under section 476 of the same Code. Such an appeal would be an appeal from an "order" of the court. In this case, the appeal was against the "order" of the Munsif. A District Judge is authorized, under section 22 of the Bengal, N.-W. P. and Assam Civil Courts Act, to transfer an appeal from an "order" of a Munsif to the court of a Subordinate Judge. It would follow, therefore, that it was competent for the District Judge to transfer the present appeal to the court of the Subordinate Judge. The principle that the District Judge could transfer such cases to another officer of competent jurisdiction was established by previous cases in this Court. The latest one is *Narain Das v. Emperor* (1). That was, however, a case in which a District Judge had transferred an appeal to an Additional District Judge. But the

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transfer was justified under section 8 of Bengal, N.-W. P. and Assam Civil Courts Act. The same principle applies when the transfer is made under section 22 to the court of a Subordinate Judge, the appeal being from an order of the Munsif.

I hold that the Subordinate Judge had jurisdiction to hear the appeal. This application, therefore, is without merits and fails and is hereby dismissed with costs.

APPELLATE CIVIL.

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July, 24.

Before Mr. Justice Sulaiman, Acting Chief Justice, and
Mr. Justice King.

RAM KISHUN (PLAINTIFF) v. LALTA SINGH AND OTHERS
(DEFENDANTS).*

Civil Procedure Code, sections 47, 145; order XXI, rules 90, 92(3)—Surety for performance of order of Court—'Party to suit'—Objections by surety to attachment and sale of his property—Confirmation of sale—Suit by surety directed against the sale, not maintainable—Res judicata in respect of execution proceedings.

A surety for the performance of an order passed in execution proceedings executed a security bond hypothecating certain property and also personally binding himself in case the property proved insufficient. Enforcement of the surety's liability was at first attempted as against the hypothecated property, but for certain reasons it was given up and the court ordered enforcement against the person and other property of the surety. Accordingly a house belonging to him was attached and sold. After the sale he made an application purporting to be under order XXI, rule 90, of the Code of Civil Procedure, and another under section 47, both being on the ground that the house could not be sold unless and until the hypothecated property was sold first. Then he filed a suit for a declaration to the same effect and withdrew his applications, which were

*First Appeal No. 188 of 1925, from a decree of Kashi Nath, Additional Subordinate Judge of Cawnpore, dated the 23rd of March, 1925.