

already pointed out that this Court never passed any order to the effect that the Oudh Commercial Bank was to realize the sum of Rs.6,000, or anything less than that, by way of compensation from Khair-un-nissa Bibi, *by virtue of that very order*. As there is no order or decree in execution of which the question has arisen, section 47 does not apply. Section 47 reads: "All questions arising between the parties to the suit in which the decree was passed . . . and relating to execution, discharge or satisfaction of the decree shall be determined by the court executing the decree and not by a separate suit." As there was no decree or order in existence, none could be executed. The decree which is sought to be executed, namely the decree No. 383 of 1923, is a wholly different decree. It was the decree passed in Khair-un-nissa Bibi's suit to obtain a declaration that the decree No. 50 of 1913 was not executable against her and the property belonging to her. The decree in the appeal ended by dismissing the appeal and maintaining the order of dismissal of the suit. The only decree that could be executed was a decree for costs and it is not that decree which is being executed at the instance of the Oudh Commercial Bank. The decree No. 50 of 1913 was a decree for realization of the mortgage amount and that is not the decree under execution and the present controversy has not arisen either in execution of decree No. 50 of 1913, or in execution of decree No. 383 of 1923. In this view there is no controversy which is to be settled by the application of section 47 of the Code of Civil Procedure.

For the reasons given above we are of opinion that the respondent has misconceived his remedy and his application to realize Rs.6,000 from Khair-un-nissa Bibi in execution was not maintainable.

We allow the appeal, set aside the order of the court below and dismiss the respondent's application for execution with costs throughout.

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 KHAIR-UN-
 NISSA BIBI
 v.
 OUDH
 COMMERCIAL
 BANK

*Before Sir Lal Gopal Mukerji, Acting Chief Justice,
Mr. Justice King and Mr. Justice Niamat-ullah.*

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January, 12

ABDUL WAHAB KHAN AND ANOTHER (DEFENDANTS) *v.*
IBRAHIM KHAN (PLAINTIFF)*

*Agra Tenancy Act (Local Act III of 1926), section 246—
Appeal—Third appeal to High Court lies—"Appellate
decree".*

Under section 246 of the Agra Tenancy Act a third appeal can lie to the High Court from the decree of a District Judge passed in a second appeal from the decree of a Collector passed in appeal from a decree of an Assistant Collector, second class.

The expression "appellate decree" in that section would apply equally to a decree passed by the District Judge in first appeal or to a decree passed by him in second appeal. The language of this section is wide enough to authorize an appeal to the High Court from a decree passed by a District Judge in second appeal, because such a decree would be an "appellate decree". The language of section 182 of the Tenancy Act of 1901 was different and provided for "second appeals" only. *Lachmi Narain v. Nirotam Das*, I. L. R., 29 All., 69, now obsolete.

In this case the following question was referred to a Full Bench: "Whether a third appeal lies to the High Court against the decree of a District Judge passed in a second appeal against the appellate decree of a Collector."

Mr. S. N. Seth, for the appellants.

Mr. Panna Lal, for the respondent.

MUKERJI, A. C. J., KING and NIAMAT-ULLAH, JJ. :—

This reference to a Full Bench raises a question whether a third appeal lies to the High Court against the decree of a District Judge passed in a second appeal against the appellate decree of a Collector.

The appeal arises out of a suit for arrears of irrigation dues amounting to Rs.172-5-0, which was brought against the heirs of one Sughra Begam, who was said

* Second Appeal No. 285 of 1930, from a decree of Raghunath Prasad, District Judge of Bulandshahr, dated the 7th of January, 1930, confirming a decree of K. Prasad, Collector of Bulandshahr, dated the 20th of June, 1929, who confirmed a decree of Muhammad Mustafa Khan, Honorary Assistant Collector, second class, of Bulandshahr, dated the 21st of February, 1929.

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to be a tenant of the plaintiff. The suit was defended on a number of grounds, which we need not specify for the purpose of disposing of the point in issue. The suit was decreed for a sum of Rs.169-2-6 by an Assistant Collector of the second class on the 21st of February, 1929. The defendants appealed to the Collector, who dismissed the appeal on the 20th of June, 1929. The defendants appealed a second time to the District Judge, who dismissed their appeal on the 7th of January, 1930. The defendants then instituted this third appeal in the High Court against the appellate decree of the District Judge, and the question is whether the appeal is competent.

An appeal from the decree of the Assistant Collector of the second class lay to the Collector, in accordance with the terms of section 241 of the Agra Tenancy Act of 1926. An appeal from the appellate decree of the Collector lay to the District Judge, if the conditions laid down in section 243 were fulfilled. It is unnecessary for us to consider whether those conditions were, in fact, fulfilled. The District Judge entertained and decided the appeal.

Section 246 is the section which governs the question whether a third appeal lies to the High Court in the circumstances mentioned above. This section enacts that "An appeal shall lie to the High Court from the appellate decree of a District Judge on any of the grounds specified in section 100 of the Code of Civil Procedure, 1908."

It must be observed that the words used in this section are "the appellate decree" and the expression "appellate decree" would apply equally to a decree passed by the District Judge in first appeal or to a decree passed by him in second appeal. In our opinion the language of this section is certainly wide enough to authorize an appeal to the High Court from a decree passed by a District Judge in second appeal, because such a decree would undoubtedly be an "appellate decree".

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Our conclusion on this point is fortified by a reference to the language of the Agra Tenancy Act of 1901. In that Act the question of appeals to the High Court from decrees of the District Judge was governed by the terms of section 182. This section provided: "A *second* appeal shall lie to the High Court from the decree in appeal of a District Judge in accordance with the provisions of chapter XLII of the Code of Civil Procedure."

The important point to observe is that this section uses the expression "*second* appeal". For that very reason it has been held in *Lachmi Narain v. Nirotam Das* (1) that no third appeal will lie to the High Court from a decree of the District Judge passed in appeal from an appellate decree of the Collector under the provisions of the Agra Tenancy Act of 1901. The reason for the decision was that when the legislature had clearly laid down that a *second* appeal should lie to the High Court from the appellate decree of the District Judge, it was clearly intended that no *third* appeal should lie.

The omission of the word "second" from section 246 of the Tenancy Act of 1926 is, in our opinion, very significant. It seems to suggest that the legislature deliberately intended to allow third appeals to the High Court in certain cases, that is to say, they intended that there should be a third appeal to the High Court from an appellate decree passed by a District Judge under section 243. Whether that was the intention of the legislature or not, we think it is clear that the words "appellate decree" in section 246 cannot be construed to mean a decree passed in first appeal only. The words are undoubtedly applicable also to a decree passed in second appeal.

We, therefore, answer the question referred to us in the affirmative.