

1930
 RAJWANTI
 KUER
 v.
 MAHABIR
 RAI.

employed by the defendant was a correct one of suing in the revenue court for the ejection of a sub-tenant. It was a regular normal process of a revenue court to order the ejection of a sub-tenant from agricultural land. The revenue court had jurisdiction to adjudicate upon the matter. It was pointed out that when both the defendant and the plaintiff equally broke the law forbidding mortgage of an occupancy holding, the defendant could not obtain possession without paying the mortgage charges of the plaintiff. That, however, is a point for the consideration of the revenue court. The authority of the revenue court thereby is not shaken in ejecting a sub-tenant. It is not as if the mortgages were valid ones and the revenue court would have no authority to brush aside valid mortgage transactions.

In the result, I am of opinion that no suit under section 9 of the Specific Relief Act lay to the Munsif's court, and he had exercised jurisdiction not vested in him.

This application is decreed with costs and the plaintiff's suit is dismissed with costs in all courts.

APPELLATE CIVIL

Before Mr. Justice Mukerji and Mr. Justice Bennet.

HIKMAT-ULLAH KHAN (OBJECTOR) v. SAKINA
 BEGAM AND OTHERS (APPLICANTS).*

1930
 November,
 20.

Criminal Procedure Code, section 476B—Appeal—Second appeal—Indian Penal Code, section 210—Order of attachment fraudulently obtained.

Section 476B of the Criminal Procedure Code contemplates that only one appeal should lie and that, when an appellate court has made a complaint under this section or has refused to make a complaint, no further appeal should lie to the High Court.

Held, also, that where an order of attachment is fraudulently obtained by a decree-holder for a sum not due, it having already been paid to him, section 210 of the Indian Penal Code applies.

* First Appeal No. 104 of 1930, from an order of H. G. Smith, District Judge of Meerut, dated the 3rd of February, 1930.

Mr. S. D. Sinha, for the appellant.

Dr. M. H. Faruqi, for the respondents.

1930

HIKMAT-
ULLAH KHAN
v.
SAKINA
BEGAM.

MUKERJI and BENNET, JJ. :—This purports to be a first appeal from order, filed by one Hikmat-ullah Khan against an order of the learned District Judge of Meerut, dated the 3rd of February, 1930, directing, under section 476B of the Code of Criminal Procedure, that a formal complaint under section 210 of the Indian Penal Code be made against the appellant Hikmat-ullah Khan. A preliminary objection was taken that no appeal lies to this Court.

The facts are that the opposite party, Mst. Sakina Begam and others, applied to the Munsif for a complaint under section 476 of the Code of Criminal Procedure, and the Munsif refused to make a complaint. Mst. Sakina Begam and others then appealed, under section 476B of the Code of Criminal Procedure, to the District Judge and he has made a complaint. The question is whether any appeal lies to this Court from that order of the District Judge making a complaint on an appeal to him under section 476B.

The learned counsel for the appellant relied on a ruling of the Patna High Court in *Ranjit Narain Singh v. Rambahadur Singh* (1); but there are rulings of no less than five High Courts to the effect that if an appellate court decides to make a complaint on appeal, no second appeal lies to the High Court: See *Ahamadar Rahman v. Dwip Chand Chowdhury* (2); *Mohim Chandra Nath Bhoumick v. Emperor* (3); *Kanai Lal Saha v. Makhan Lal Saha* (4); *Muhammad Idris v. The Crown* (5); *Ma On Khin v. N. K. M. Firm* (6); *Somabhai Vallabh v. Aditbhai Parshottam* (7) and *Moideen Rowthen v. Miyassa Pulavar* (8). We are also

(1) (1925) I.L.R., 5 Pat., 262.

(3) (1928) I.L.R., 56 Cal., 824.

(5) (1924) I.L.R., 6 Lah., 66.

(7) (1924) I.L.R., 48 Bom., 401.

(2) (1927) I.L.R., 55 Cal., 765.

(4) (1927) I.L.R., 55 Cal., 888.

(6) (1927) I.L.R., 5 Rang., 523.

(8) (1927) I.L.R., 51 Mad., 777.

1930

HEMAT-
EDDILAH KHAN
v.
SAKINA
BEGAM.

of opinion that the natural construction to place on the words of the section in question, viz., 476B, is that only one appeal should lie and that, when an appellate court has made a complaint under this section or has refused to make a complaint, no further appeal should lie to the High Court. But it has been urged by the learned counsel for the applicant that we should treat this matter as a revision. At first he contended that the appellate court had no jurisdiction to pass the order in question, because he argued that the appellate court acted as a court of session. The actual application to the lower appellate court was headed "In the court of the District Judge of Meerut" and in the body of the application it was stated "The appellant above named appeals to the court of the District and Sessions Judge, Meerut". Apparently the office of the District Judge made the mistake of heading the proceedings as "In the court of the Sessions Judge of Meerut" and gave a number as "Criminal Appeal No. 403 of 1929"; but the learned District Judge himself subscribed his signature with the words "District Judge" below it, and it is clear, therefore, that he acted as District Judge on appeal from an order of the Munsif and he had jurisdiction under section 476B.

It was next argued that, on the facts found by the District Judge, no criminal complaint would lie under section 210 of the Code of Criminal Procedure, and reference was made to *Shama Charan Das v. Kasi Naik* (1). This argument was addressed to us under section 115 of the Code of Civil Procedure, as a court of revision, and we proceed accordingly to consider this matter as a court of revision. The ruling in *Shama Charan Das v. Kasi Naik* (1) lays down that, where there was an application to execute a decree and an objection was made to the application to the effect that the decree had been satisfied by payment out of court and

(1) (1896) I.L.R., 23 Cal. 971.

the application was therefore dismissed, then no complaint under section 210 of the Indian Penal Code would lie for making an application which was fraudulent. But, in the present case, the facts are different, because on the application made by Hikmat-ullah there was an order of attachment passed against the property of Mst. Sakina Begam and her children. It was then that they made an objection and the order of attachment was set aside. Now, in execution there are two proceedings, first attachment and then sale. We consider that the case would come under section 210, because Hikmat-ullah did obtain an order of attachment against the property of Mst. Sakina Begam for a sum which was not due from her. The wording of section 210, "whoever fraudulently obtains an order against any person for a sum not due", would accordingly apply. But, as the matter has been brought before us in revision, we think that a second section, section 209 of the Indian Penal Code, ought to be added, and we direct that section 209 of the Indian Penal Code be also added to the complaint made by the District Judge to the Magistrate. Otherwise, we dismiss this appeal with costs.

Before Justice Sir Shah Muhammad Sulaiman and Mr. Justice Young.

BANDHU SINGH (JUDGMENT-DEBTOR) *v.* KAYASTHA TRADING BANK (DECREE-HOLDER).*

1930
November,
20

Civil Procedure Code, section 48—Twelve years' bar against execution—"Fresh application"—Application for sale of new items of property—"Fraud or force"—Frivolous objections raised by judgment-debtor.

An application by the decree-holder for the attachment and sale of new items of property, which had never been mentioned in any of the previous applications, is a fresh application within the meaning of section 48 of the Civil Procedure Code and, if made more than twelve years after the date of the decree, cannot be entertained. The mere fact

* First Appeal No. 422 of 1929, from a decree of S. M. Alam, Subordinate Judge of Gorakhpur, dated the 14th of August, 1929.