

having any interest in the joint lands of the mahal or in the administration of its affairs. The khewat also shows that the 20 biswas were all entered against Ram Das and Mst. Kokla and they alone had management of the unculturable land. The two khewats of resumed muafi-holders related only to specific plots of land with specific Government revenue entered against them.

We have given the case our anxious consideration and we have come to the conclusion that the view taken by the court below is correct. We accordingly dismiss this appeal with costs.

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MANGAN
LAL
v.
BRAHM
DATT

APPELLATE CRIMINAL

Before Mr. Justice Mulla

EMPEROR v. AKBAR HUSAIN KHAN*

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Criminal Procedure Code, sections 195(3), 476B—Complaint under section 476 by Civil Judge sitting as Special Judge under the U. P. Encumbered Estates Act—Appeal—Forum.

An appeal from a complaint, made under section 476 of the Criminal Procedure Code, by a Civil Judge sitting as Special Judge under the U. P. Encumbered Estates Act lies to the District Judge and not to the High Court. In taking the action under section 476 the Special Judge acts only as a civil court, irrespective of the fact that the court is further invested with special powers under the U. P. Encumbered Estates Act, and does not pass an order under the Encumbered Estates Act which would be appealable to the High Court under section 45 of that Act. It is merely an order under section 476 of the Criminal Procedure Code by a civil court, and according to the provisions of section 476B read with section 195(3) of the Code the appeal would lie to the District Judge and not to the High Court.

Mr. M. A. Aziz, for the appellant.

Appeal heard *ex parte*.

MULLA, J.:—This is an appeal under section 476B of the Criminal Procedure Code. It appears that the appellant Akbar Husain gave evidence in the court of

*Criminal Appeal No. 619 of 1939, from an order of Mathura Prasad, Special Judge of Mirzapur, dated the 8th of July, 1939.

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the Special Judge, First Grade, Mirzapur, in a case under the Encumbered Estates Act. The learned Special Judge came to the conclusion that the appellant had committed perjury and has accordingly made a complaint against him under section 476 of the Criminal Procedure Code. It is obvious to my mind that in taking action under section 476 of the Criminal Procedure Code the learned Special Judge has acted only as a civil court irrespective of the fact that the court is further invested with special powers under the Encumbered Estates Act. The learned Special Judge is primarily Civil Judge of Mirzapur and if he takes any action under section 476 in an ordinary civil case, whatever its valuation, his order would be appealable to the District Judge and not to this Court. Section 476B clearly provides that a person against whom a complaint has been made "may appeal to the court to which such former court is subordinate within the meaning of section 195, sub-section (3)." Section 195, sub-section (3) provides that "where appeals lie to more than one court, the appellate court of inferior jurisdiction shall be the court to which such court shall be deemed to be subordinate;". From these provisions of law it is clear, in my judgment, that any order passed by the Civil Judge of Mirzapur under section 476 of the Criminal Procedure Code making a complaint for an offence against any person would be appealable to the District Judge and not to this Court. The question, therefore, is whether the fact that the order appealed from in the present case has been made in connection with a case under the Encumbered Estates Act takes it out of the purview of the above provisions of law. In my view the answer is in the negative. The learned Special Judge in making a complaint under section 476 has not passed an order under the Encumbered Estates Act which would be appealable to this Court under section 45 of that Act. It is merely an order under section 476 of the Criminal Procedure Code

by a civil court and the question of the forum of appeal from that order has to be decided in the light of the provisions of section 476B read with section 195 of the Criminal Procedure Code. In accordance with those provisions the appeal would lie, as stated above, in the court of the District Judge and not in this Court. I therefore hold that this appeal does not lie in this Court and accordingly order that it should be returned for presentation to the proper court.

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 EMPEROR
 v.
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 APPELLATE CIVIL

Before Sir John Thom, Chief Justice, and Mr. Justice Ganga Nath

SRI MADAN MOHANJI AND ANOTHER (DEFENDANTS) v.
 KISHNA KUAR (PLAINTIFF)*

 1939
 September,
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Hindu law—Acceleration—Surrender by widow in favour of next reversioner—Surrender of the residue after a prior alienation by the widow of a part of her husband's estate—Validity—Civil death—Co-widows—Endowment for religious purposes by one, after partition between them, of part of the husband's estate without the consent of the other—Validity.

A Hindu widow is entitled to make an absolute surrender in favour of the nearest reversioner of such part of the estate as she holds as a Hindu widow at the time when the deed of surrender is made. A deed of surrender is not invalid because the widow prior to the execution of the deed has made alienations of part of the estate. If the deed effects a complete surrender of the widow's entire interest in her husband's estate at the date of the execution of the deed it is valid and effective.

A Hindu widow is no doubt entitled to make an endowment for religious purposes of a small portion of her deceased husband's estate, but when there are two widows the one can not make an endowment without the consent of the other. Upon the death of the husband the widows take a joint interest in their deceased husband's estate and no alienation can be effected by the one, without the consent of the other, so as to prejudice the rights of the survivor or a future reversioner. The mere fact of partition between the two, while it gives each a right to the fruits of the separate estate assigned

*First Appeal No. 179 of 1934, from a decree of Zamirul Islam Khev Civil Judge of Budaun, dated the 9th of April, 1934.