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authority to override the provision of the law by saying that the offence falls under another section of the Indian Penal Code and as no sanction is necessary for the prosecution under that section the offender may be prosecuted without any sanction." Here in the present case the matter stands on a different footing altogether. Here the law ordains under section 198 of the Criminal Procedure Code that a complaint for defamation cannot be filed by any person except the complainant. According to section 198 of the Criminal Procedure Code a Magistrate would be incompetent to make a complaint for defamation. So it cannot be said that the ruling relied upon by the learned trial Magistrate has any application to the case before me.

The result is that I allow these applications, set aside the orders passed by the trial Magistrate and send back both the cases to the court of the trial Magistrate through the District Magistrate with directions that the learned Magistrate should try both the cases according to law.

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## APPELLATE CIVIL

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*Before Justice Sir Edward Bennet and Mr. Justice Verma*

SHANTI LAL (JUDGMENT-DEBTOR) v. JAMNI KUNWAR  
(DECREE-HOLDER)\*

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*Civil Procedure Code, section 39(1)—Transfer of decree for execution on application by decree-holder—Pecuniary jurisdiction of court to which such transfer is made—Need not be competent to try the original suit—Civil Procedure Code, section 6—Limitation Act (IX of 1908), article 182(5)—Application in accordance with law—Application for transfer of decree to court of a lower grade.*

It is not necessary that the court to which a decree is transferred for execution, upon the application of the decree-holder, under section 39(1) of the Civil Procedure Code should be a

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\*First Appeal No. 102 of 1938, from a decree of Shiva Harakh Lal, Civil Judge of Budaun, dated the 18th of December, 1937.

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court having pecuniary jurisdiction to try the suit itself in which the decree was passed.

So, where the original suit was valued at Rs.13,962 and decided by a Subordinate Judge and the decree was for Rs.869, and upon the application of the decree-holder the decree was transferred to the court of a Munsif, it was *held* that the Munsif had jurisdiction to execute the decree and the application for transfer was an application in accordance with law to take a step in aid of execution and therefore saved limitation.

[*Per* BENNET, J.—The word “suit” in section 6 of the Civil Procedure Code includes an execution case, and in such a case what the section requires is that the valuation of the execution case should be within the pecuniary jurisdiction of the court dealing with it, irrespective of the valuation of the suit itself.]

Mr. C. B. Agarwala, for the appellant.

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

BENNET, J.:—This is an execution first appeal by a judgment-debtor Shanti Lal who has made an objection which has been disallowed by the court below. The facts are that Shanti Lal brought a suit, No. 128 of 1926, and his suit was dismissed by the Subordinate Judge of Budaun on 26th February, 1927, and a decree was granted against him for costs in favour of defendant No. 2 Sheo Devi and defendant No. 3 Mst. Jamni Kunwar. Shanti Lal appealed to the High Court and the High Court dismissed his appeal with costs on 11th December, 1930. On 4th December, 1933, the holder of the decree for costs applied to the Subordinate Judge of Budaun to transfer the decree to the Munsif of Khurja for execution. This was granted. It is this application which it is claimed saves limitation. On 8th January, 1934, an application was made to the Munsif of Khurja for execution. On 1st February, 1934, that application was struck off, and it was infructuous. On 8th January, 1936, Mst. Jamni Kunwar, one of the holders of the decree for costs, made the present application for execution to the Subordinate Judge of Budaun. The point raised by Shanti Lal is

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that this application for execution is time barred and that the application for transfer by the decree-holder on 4th December, 1933, does not save limitation because he alleges that the application did not comply with the requirements of section 39(1) of the Civil Procedure Code. The allegation is that the section requires that the court to which the decree is to be transferred is a court which should have pecuniary jurisdiction to try the suit in which the decree is passed, and that because the suit was one in the court of a Subordinate Judge the decree cannot be sent to the court of a Munsif for execution. It is to be noted that the decree for costs which is now to be executed amounted to Rs.869-2-0 and that this sum is within the pecuniary jurisdiction of the Munsif of Khurja. As regards the application of section 39 it may be pointed out that the objector gives his address as a resident of Khurja and therefore he came within the provisions of section 39(1) (a) which provides that the decree may be sent for execution to another court "if the person against whom the decree is passed actually and voluntarily resides . . . within the local limits of the jurisdiction of such other court." There are four conditions in section 39(1) and if any of these conditions is satisfied the transfer of the decree may be made. In the present case, therefore, there is no doubt that the residence of Shanti Lal, the judgment-debtor, in Khurja was a condition which entitled the Subordinate Judge to make the order of transfer on the application of the decree-holder. Now as regards the capacity of the court to which the transfer is made section 39(1) states: "The court which passed a decree may, on the application of the decree-holder, send it for execution to another court,—". There is nothing stated in this sub-section as regards the pecuniary jurisdiction of the court to which the decree is to be sent for execution. Reliance has been placed on section 6 of the Civil Procedure Code which provides as follows: "Save in so

far as is otherwise expressly provided, nothing herein contained shall operate to give any court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction." This section provides that the court should have jurisdiction over the suit. Now the word "suit" here includes an execution case, which is headed as a Miscellaneous case. The present execution suit is Miscellaneous No. 22 of 1937 and the original suit was No. 128 of 1926, in the court of the Civil Judge of Budaun. The natural view of section 6 is that it applies to the suit in question which is the execution case before the Munsif. That execution case is for Rs.869-2-0 and this is within the pecuniary jurisdiction of the Munsif of Khurja. Accordingly the transfer of the decree to the Munsif of Khurja for execution did not offend against the provisions of section 6 of the Civil Procedure Code. This matter has been referred to a Bench of two Judges by a learned single Judge who pointed out that there were certain rulings to the contrary and these rulings have been cited before us. It appears that the Madras High Court has taken the view which has been set out, namely that neither in the previous Code nor in the present Code is it necessary that the court to which a decree is transferred for execution should be a court having a limit of pecuniary jurisdiction which would include the original valuation of the suit. This view has been expressed in *Narasayya v. Venkatakrishnayya* (1), in *Kelu v. Vikrisha* (2), in *Shanmuga Pillai v. Ramanathan Chetti* (3), in *Ghulam Ghouse v. Sunni Lal* (4) and in *Abdulla Sahib v. Ahmed Hussain Sahib* (5). On the other hand it has been held in *Gokul Kristo Chunder v. Aukhil Chunder Chatterjee* (6) that having regard to the provisions of section 6 of the Code of Civil Procedure of 1882 a civil court has no jurisdiction to execute a decree

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(1) (1884) I.L.R. 7 Mad. 397.

(2) (1891) I.L.R. 15 Mad. 345.

(3) (1894) I.L.R. 17 Mad. 309.

(4) (1909) 5 Indian Cases 155.

(5) (1913) 22 Indian Cases 275.

(6) (1889) I.L.R. 16 Cal. 457.

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sent to it for that purpose under section 223 of the Code, when the decree has been passed in a suit the value or subject-matter of which is in excess of the pecuniary limits of its ordinary jurisdiction. This ruling specifically dissented from *Narasayya v. Venkatakrishnayya* (1). This Calcutta ruling was based on the language in section 6 of the Code of Civil Procedure of 1882 which provided: "Nothing in this Code shall operate to give any court jurisdiction over suits of which the amount or value of the subject-matter exceeds the pecuniary limits (if any) of its ordinary jurisdiction." The Court considered that suits should be held to be continued in execution proceedings. There is another ruling in the same volume, *Durga Charan Mojumdar v. Umatara Gupta* (2). In this it was held by another Bench of the Calcutta High Court to the same effect, following the ruling on page 457. It may be noted that in regard to this ruling on page 457 there were three cases before the court. In the second of these cases (mentioned on page 458) the amount of the decree was for Rs.11,000 which was transferred to a Munsif. In the third of these cases (mentioned on page 459) the amount of the decree was Rs.3,209 which was transferred to a small cause court Judge for execution. The amount of the decree in the first case was not mentioned. It appears therefore that in this ruling no point arose for distinction between the valuation of the original suit and the amount of the decree. I consider, therefore, that the decision of the court was correct in holding that section 6 of the Civil Procedure Code would bar the jurisdiction of the Munsif or of the small cause court from executing these decrees. But I consider that section 6 should be applied to the valuation of the execution case. It is, however, probable that the reasoning in the ruling was meant to apply to a case where the valuation of the original suit would be beyond the pecuniary jurisdiction of the

(1) (1884) I.L.R. 7 Mad. 397.

(2) (1889) I.L.R. 16 Cal. 465.

execution court and the amount of the decree would be within that pecuniary jurisdiction. But the point was not before the court. In the second ruling, on page 465, although the decree was only for Rs.500 and the court to which it was sent was the court of a Munsif the point was not raised.

The next ruling on which reliance was placed for the appellant is that in *Amrit Lal v. Murlidhar* (1). In that ruling it was laid down that an application for the transfer of a decree to another court for execution is not a step in aid of execution within the meaning of article 182(5) of the Limitation Act, 1908, if the application was to transfer the decree to a court which had no jurisdiction to try the suit in which the decree was passed. It may be noted that the Calcutta rulings had not dealt with the case of limitation but with the validity of the order of transfer. The Patna Court followed the ruling in *Durga Charan Mojumdar v. Umatara Gupta* (2). The Patna ruling on page 657 also referred to *Shamsundar Saha v. Anath Bandhu Saha* (3) as supporting its view. This Calcutta ruling, however, deals with the interpretation of section 31(b) of the Presidency Small Cause Courts Act and it does not deal with the interpretation of section 39 of the Civil Procedure Code. Moreover, the decree in question was one exceeding Rs.1,000, which was the limit of the pecuniary jurisdiction of the Munsif. Therefore, in my view, section 6 of the Code of Civil Procedure would apply to such a transfer and the Munsif would not have jurisdiction to deal with such a decree in execution. The present case, however, is different and the proposition laid down by the Patna High Court was one which would apply to the present case, namely that it was the valuation of the original suit which should be taken into account for determining the application of section 6 to the court to which the decree was transferred. The Patna ruling was follow-

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(1) (1922) I.L.R. 1 Pat. 651.

(2) (1889) I.L.R. 16 Cal. 465.

(3) (1910) I.L.R. 37 Cal. 547.

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ed in *Sital Prasad Shukul v. Babu Lal Shukul* (1). That was the case of a decree for Rs.649-11-0 for costs and it was held that the Munsif could not execute that decree when it was transferred to him because the original suit had been beyond his jurisdiction. This was not a case of limitation.

For the appellants reference was also made to *Shri Sidheshwar Pandit v. Shri Harihar Pandit* (2). This was not a case of a transfer on the application of a decree-holder but a case of a transfer of its own motion by the court which passed the decree, under section 39(2) of the Civil Procedure Code.

We now come to the one case of the Allahabad High Court which has been cited in favour of the appellants, *Sita Ram Rai v. Madho Prasad* (3). In that case a learned single Judge has followed the Patna and Calcutta rulings and has differed from the Madras rulings. In that case there was a suit before a Subordinate Judge which, it is stated in the ruling on page 100, exceeded in value Rs.5,000. The learned single Judge has not stated what was the amount of the decree. The decree was transferred on the application of the decree-holder to the court of a Munsif and it was claimed that this transfer was a step in aid of execution which would save limitation. The learned single Judge held that it would not save limitation because he held that as the valuation of the original suit was beyond the jurisdiction of the Munsif therefore the transfer could not be made to the court of the Munsif under section 39 of the Code of Civil Procedure. On page 101 he has stated as follows:

"Section 223 of the Code of 1882 corresponds to sections 38, 39, 41 and to certain other sections of the Code of 1908. In the present case I am concerned with only that portion of section 223 of the Code of 1882 that has been re-enacted in section 39 of the Code of 1908. Section 39(1) prescribes the circumstances in which the court passing the

(1) (1932) I.L.R. 11 Pat. 785.

(2) (1887) I.L.R. 12 Bom. 155.

(3) I.L.R. [1939] All. 97.

decree may, on the application of the decree-holder, send the same for execution to another court. Clause (2) of section 39 of the Civil Procedure Code empowers the court of its own motion to send the decree for execution to any subordinate court 'of competent jurisdiction'. A comparison of section 39 of the present Code with the relevant portion of section 223 of the former Code shows that section 39 has reproduced the relevant portion of section 223 verbatim except in one respect. In the former Code it was provided that 'The court which passed a decree may of its own motion send it for execution to any court subordinate thereto.' But in clause (2) of section 39 the words 'of competent jurisdiction' have been added. This addition must have been deliberate and intentional and was presumably with a view to set at rest the conflict between the Calcutta and the Madras High Courts on the point. The addition of the words 'of competent jurisdiction' in clause (2) of section 39 unmistakably points to the conclusion that the legislature intended to lay down that it is not open to any and every court to execute a decree irrespective of its pecuniary jurisdiction and that the competence of a court to execute a particular decree must be determined by reference to its competence to try a suit of similar valuation in which the decree under execution was passed. Accordingly the Madras cases can no longer be deemed to be laying down the correct law and I must hold that the Munsif of Bansaon had no jurisdiction to execute the decree held by the appellants."

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In considering this argument I may point out that in the Civil Procedure Code of 1882 there was a section 223 which provided as follows:

"A decree may be executed either by the court which passed it or by the court to which it is sent for execution under the provisions hereinafter contained.

"The court which passed a decree may, on the application of the decree-holder, send it for execution to another court—(a) If the person against whom the decree is passed actually and voluntarily resides or carries on business or personally works for gain, within the local limits of the jurisdiction of such other court; or (b) If such person has not property within the local limits of the jurisdiction of the court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other court; or (c) If the decree directs



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the sale of immovable property situate outside the local limits of the jurisdiction of the court which passed it; or (d) If the court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other court.

*Be met, J.* "The court which passed a decree may of its own motion send it for execution to any court subordinate thereto."

There were other matters in this section which do not concern us, but the portion quoted has now been embodied in section 39 of the Civil Procedure Code of 1908. The section as it stands in both Codes deals with two entirely different matters; (1) the transfer of a decree for execution on the application of a decree-holder, and (2) the transfer of a decree for execution by the court of its own motion. Now the changes in regard to this latter provision are two. Firstly, the Code of 1908 has numbered the two matters separately as sub-section (1) and sub-section (2). It appears that the Code of 1908 intended to make clear the distinction of the two cases. The second point is that to sub-section (2) there have been added the words "of competent jurisdiction" to the word "court". Now this addition has been made only in sub-section (2). If the legislature had intended to make some alteration or to emphasise some point in regard to sub-section (1), those words would also have been added to the word "court" in sub-section (1), but those words were not added and it does not appear that any argument on the meaning of sub-section (1) can be founded on the addition of these words in sub-section (2). The two sub-sections are entirely distinct, and, with all due respect, it does not appear that the learned single Judge was correct in holding that the legislature intended to apply the view of the Calcutta High Court to sub-section (1) by making this addition to sub-section (2). As regards sub-section (2) it may be mentioned that the reference to a subordinate court is to be read in the light of section 3 of the Civil Procedure Code which

deals with the subordination of courts, and rulings on this question of the subordination of courts have no bearing on sub-section (1) which is for transfer on the application of the decree-holder.

There is in my opinion nothing shown from the letter of the law to support the view of the Calcutta and Patna High Courts. The interpretation which I place on section 6 is one which applies this section to the valuation of the case actually transferred, that is, the execution case. There does not appear to be any reason whatever why the question should go back to the valuation of the original suit. Where proceedings have terminated in a decree the question of the execution of one decree is the same as the execution of another of the same amount and no question of the original valuation of the suit has any real bearing on the question of execution of a decree. It is the valuation of the decretal amount which determines the importance of the case for the limits of pecuniary jurisdiction.

Another matter which has to be noted is that section 39 is intended for the convenience of parties. If there were no right of transfer of a decree, execution proceedings would have to take place in courts sometimes very distant from the property which was attached. This inconvenience led to the provision for the transfer of decrees to the court which had local jurisdiction. If the rule were to be applied that the court of local jurisdiction was not to have power to entertain execution cases where the original suit had been of a value beyond its pecuniary jurisdiction certain inconveniences would occasionally follow. In the jurisdiction of this High Court there is the mountain area of Kumaun and in this area communications are extremely difficult especially during winter and in the rains, and to hold that such a criterion should apply would cause great hardship to the population of Kumaun. There does not appear to be any advan-

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tage whatever from the view of the Calcutta and Patna High Courts and that view appears to me to be founded on a straining of the language of section 6 of the Code of Civil Procedure. The natural interpretation is not in accordance with that view but is in accordance with the view of the Madras High Court. For these reasons I consider that the view of the Madras High Court is the correct view and that it should be followed in this High Court. In regard to the decision of the learned single Judge in *Sita Ram Rai v. Madho Prasad* (1) we are informed by learned counsel that this case is under Letters Patent appeal and therefore no final decision has been given by this High Court.

Grounds other than the ground of limitation were not argued.

In my view therefore this appeal should be dismissed with costs.

VERMA, J.:—I agree that the appeal should be dismissed with costs.

I will briefly recapitulate the essential facts and state the precise points which in my opinion arise in this case. The appellant was the plaintiff in a suit, No. 128 of 1926, instituted in the court of the Subordinate Judge of Budaun. There are no papers on this record to show the amount at which the suit was valued or to show the nature of the suit. We have, however, a certified copy of the decree of this Court in First Appeal No. 184 of 1927 which was filed by the appellant in this Court against the decree of the trial court which had dismissed his suit with costs. It appears from this copy of the decree that the value of the subject-matter of the appeal was Rs.13,962-9-6. It may therefore be taken that the same was the value of the subject-matter of the suit. This Court agreed with the trial court in dismissing the appellant's suit and dismissed the appeal with costs. The application for execution, which has given rise to this appeal, was

(1) I.L.R. [1939] All. 97.

filed by the respondent, who was one of the defendants in the suit, for the realisation of the costs allowed by the first court and by this Court. The total amount of these costs is below Rs.900. This application for execution was filed on 8th January, 1936. The appellant raised the plea that the application was barred by time. The decree-holder pointed out in reply that he had made a previous application on 4th December, 1933, by which he had prayed for the transfer of the decree to the court of the Munsif of Khurja, and urged that the present application, being within three years of the previous application, was not barred by time. The appellant did not, and does not, contest the proposition that an application, presented to the court which passed the decree, asking for the transfer of the decree for execution to another court, is a step in aid of execution. In the two petitions of objection filed by the appellant in the court below, one on the 19th of March, 1937, and the other on the 20th of March, 1937, there was only the bare plea that the application for execution was barred by time and no reasons were given. The argument advanced before the court below is thus stated by it in its judgment: "The contention of the judgment-debtor is that that proceeding does not save limitation because the certificate was obtained for Munsif's court, Khurja, while the property was within the jurisdiction of the Munsif of Bulandshahr."

The point raised in this Court is different. It is argued that the application dated 4th December, 1933, was not a step in aid of execution because it was not made in accordance with law, and the reason given for this contention is that it made a prayer which the court of the Civil Judge was not competent to grant, namely, that the decree be transferred to the court of a Munsif. It is argued that the court to which a decree is sought to be transferred must be a court having pecuniary jurisdiction to hear the original suit culminating in

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the decree, irrespective of the amount for which the decree has been passed.

It seems to me that on the facts of this case the question which arises is, "Has a court to which a decree is sent for execution under section 39 of the Code jurisdiction to execute the decree, if the amount of the *decree* exceeds the limits of the pecuniary jurisdiction of that court?", and not whether a court to which a decree is sent for execution has jurisdiction to execute it if the amount at which the *suit* is valued exceeds the limits of the pecuniary jurisdiction of that court. Thus, the question which actually arises on the facts of this case is somewhat narrower than the question which has been argued, and it seems to me that some of the cases on which reliance has been placed by the learned counsel for the appellant are really not applicable. In some of them the amount of the decree itself was much beyond the jurisdiction of the court to which the decree was transferred. In some others the amount of the decree for which execution was sought does not appear from the report.

Taking the narrower question first, it seems to me that there is no warrant for the proposition that unless the court to which a decree is transferred has pecuniary jurisdiction to try the suit itself in which the decree was passed it has no jurisdiction to execute it even if the amount of the decree itself is within its pecuniary jurisdiction. The power to transfer decrees is contained in section 39 of the Code of Civil Procedure. It is the first sub-section of that section with which we are concerned, for we have here a case in which an application was made by the decree-holder requesting the court which passed the decree to send it for execution to another court. There is nothing in that sub-section which, in my opinion, can justify the restriction which is sought to be put on the jurisdiction of the court to which a decree can be sent for execution. The words are: ". . . may . . . send it

... to another court." Of the cases cited the only case in this Court which is in point is that of *Sita Ram Rai v. Madho Prasad* (1), decided by a learned single Judge. It seems to be on all fours with the case before us. The reasons given by the learned Judge for his decision are contained in the paragraph on page 101 of the report which has been quoted *in extenso* by my learned brother. The attention of the learned Judge does not seem to have been drawn to the fact that the words, "of competent jurisdiction", have been added in what the legislature, when adding those words, numbered as sub-section (2) of the section. The corresponding provisions in the Code of 1882 were contained in the second and the third paragraphs of section 223. That section did not have separately numbered sub-sections. The third paragraph of section 223 of the old Code ran thus: "The court which passed a decree may of its own motion send it for execution to any court subordinate thereto." It seems to me that the reason for the change was that the expression "court subordinate thereto" was likely to create difficulties. The words "subordinate thereto" were clearly inappropriate. Further, in section 2 of the Code of 1882 it was laid down, in connection with the definition of "district", that every court of a grade inferior to that of a District court and every court of small causes shall, for the purposes of the Code, be deemed to be subordinate to the High Court and the District court. Similar provisions are contained in the Code of 1908 in section 3. In view of these provisions relating to the subordination of courts, the expression "court subordinate thereto" had to be changed. It was therefore considered necessary to alter that expression to "subordinate court of competent jurisdiction". But, when making this change, the legislature, it seems to me, was anxious to make it clear that this provision would apply only to those cases where the court, that had passed the decree, *of its own motion* sent it for execution to another

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court, and that it was not to apply to a case in which the decree-holder made an application praying that the decree be sent to another court for execution. The legislature therefore divided section 39 into two sub-sections, the provisions dealing with cases in which *the decree-holder applied for transfer* of the decree being in sub-section (1) and those dealing with cases in which the court passing the decree *of its own motion* sent it for execution to another court being in sub-section (2). What was the reason which prompted the legislature to make this distinction between the two classes of cases which are dealt with in the two sub-sections is not a question for us to consider. It is enough for our purpose that the legislature has thought fit to make the distinction. It also seems to me that the meaning of the expression "court of competent jurisdiction" is not quite clear. It may have to be considered when a case arises to which sub-section (2) applies. With great respect to the learned Judge who has decided the case of *Sita Ram Rai v. Madho Prasad* (1) I am unable to agree with the views expressed by him.

On the wider question also I prefer the reasoning of the Madras High Court to that of the Calcutta High Court. The Calcutta view was followed by the Patna High Court in *Amrit Lal v. Murlidhar* (2) on the ground that the Patna High Court should follow the Calcutta rulings unless it was satisfied that those rulings were "decidedly wrong" (vide page 657 of the report). The decisions of the Madras Court are to be found in *Narasayya v. Venkatakrishnayya* (3) and *Shanmuga Pillai v. Ramanathan Chetti* (4). Reference may also be made to the cases of *Kelu v. Vikrisha* (5), *Ghulam Ghouse v. Sunni Lal* (6) and *Abdulla Sahib v. Ahmed Hussain Sahib* (7). The Calcutta case mentioned by the learned Judge of this Court in his judgment in *Sita Ram Rai*

(1) I.L.R. [1939] All. 97.

(2) (1922) I.L.R. 1 Pat. 651.

(3) (1884) I.L.R. 7 Mad. 397.

(4) (1894) I.L.R. 17 Mad. 309.

(5) (1891) I.L.R. 15 Mad. 345.

(6) (1909) 5 Indian Cases 155.

(7) (1913) 22 Indian Cases 275.

v. *Madho Prasad* (1) is that of *Durga Charan Mojumdar v. Umatara Gupta* (2). Learned counsel appearing for the appellant has further cited the decision in *Gokul Krishto Chunder v. Aukhil Chunder Chatterjee* (3). In the case of *Durga Charan Mojumdar v. Umatara Gupta* the learned Judges relied on the fact that in the Code of 1882, which was in force when that decision was given, the chapter relating to matters in execution formed a portion of Part I of the Code which was entitled "Of Suits in General". It is significant that in the Code of 1908 that arrangement has been altered. In the Code of 1882, Part I, headed "Of Suits in General", consisted of twenty chapters, the nineteenth being headed "Of the Execution of Decrees", and section 223 was the first section of this chapter. In the present Code, Part I, headed "Suits in General", contains sections 9 to 35A, and the whole subject of execution is now contained in Part II, headed "Execution". As I have already stated, I am of the opinion that the reasons given by the Madras High Court for its view are preferable to those given by the Calcutta High Court.

For the reasons given above, the appeal should in my opinion be dismissed.

BY THE COURT—The appeal is dismissed with costs.

(1) I.L.R. [1939] All. 97.

(2) (1889) I.L.R. 16 Cal. 465.

(3) (1889) I.L.R. 16 Cal. 457.