

sitting as a *persona designata*. In the present case there is much more reason for this decision because the Local Government has to appoint someone in every case under section 35C.

Another ruling to which reference has been made is *Abdur Rahman v. Abdur Rahman* (1). It was there held that there was no right of appeal against the order of a Commissioner on an election petition presented to him under the provisions of the U. P. Municipalities Act, 1916. That Act had similar provisions and the basis of the decision was the same.

For these reasons we consider that no appeal lies to this Court and we dismiss this appeal from order with costs.

REVISIONAL CIVIL

Before Justice Sir Edward Bennet and Mr. Justice Verma

PANNA LAL (DECREE-HOLDER) *v.* COLLECTOR OF
MEERUT AND OTHERS (JUDGMENT-DEBTORS)*

1939
November, 30

Co-operative Societies Rules, rule 137(i)—Recovery by Collector of a claim by Co-operative Bank as if it were an arrear of land revenue—Claim thereby does not acquire same priority as land revenue.

The fact that a particular claim or debt is, by law, recoverable by the Collector as if it were an arrear of land revenue does not invest it with the character of land revenue so as to confer on it the right of priority which land revenue has. The method or procedure which can be adopted for the recovery of the money is one thing, and the substantive right of priority is another.

So, where the crops belonging to the judgment-debtor were attached by the decree-holder, and subsequently the same crops were attached by the Collector for recovery of a sum due to the District Co-operative Bank, such sum being, under rule 137(i) of the Co-operative Societies Rules, recoverable as if it were an arrear of land revenue, it was held that the decree-holder's attachment prevailed, and the sum due to the District Co-operative Bank had no priority.

Mr. S. B. L. Gaur, for the applicant.

Mr. Shiva Prasad Sinha, for the opposite parties.

*Civil Revision No. 463 of 1937.
(1) (1925) I.L.R. 47 All. 513.

1939

PANNA LAL
v.
COLLECTOR
OF MEERUT

BENNET and VERMA, JJ. :—The applicant, Panna Lal, had a decree for money against Hansa and Faqira. He executed that decree in the court of the Munsif of Meerut and prayed for attachment and sale of certain crops belonging to Hansa and Faqira. The attachment was made on the 16th of March, 1937, and the sale took place on the 8th of April, 1937. Panna Lal set off the sale price against the amount due under his decree and filed a receipt in court stating that his decree had been discharged. On the 28th of May, 1937, a letter was received by the learned Munsif from the Collector requesting that Panna Lal should be called upon to pay the amount for which he had purchased the crops of Hansa and Faqira to the Collector. It transpired that Hansa and Faqira were members of the Murlipur Co-operative Society, that the District Co-operative Bank of Meerut had advanced loans to the Murlipur Co-operative Society and had obtained an award against the Murlipur Co-operative Society in respect of those advances. The award provided that every member of the Murlipur Co-operative Society would be liable for the debt that was due from the Murlipur Co-operative Society to the District Co-operative Bank of Meerut. It further transpired that under rule 137(i) of the Co-operative Societies Rules a requisition had been sent to the Collector for the recovery of the amounts due to the District Co-operative Bank under the award. This sub-rule provides that on receipt of such a requisition the Collector can recover the money as if it were an arrear of land revenue. Having received this requisition, the Collector proceeded against Hansa and Faqira on the ground that they, as members of the Murlipur Co-operative Society, were liable for the debt due to the District Co-operative Bank from the Murlipur Co-operative Society, and purported to make an attachment on 2nd April, 1937, of those very crops which had already been attached by the civil court in execution of Panna Lal's decree. It was because of the receipt of the requisition and because of the attachment

that he had purported to make on 2nd April, 1937, that the Collector sent the letter, mentioned above, to the civil court on 28th May, 1937. The learned Munsif has in a short order held that the District Co-operative Bank is entitled to priority over Panna Lal and has directed Panna Lal to refund the sale proceeds. It is against this order that this petition in revision is directed.

1939
PANNA LAL
v.
COLLECTOR
OF MEERUT

It seems to us that the order of the learned Munsif is unsustainable. Learned counsel appearing for the respondent has referred to section 19 of the Co-operative Societies Act (No. II of 1912). But that section, in our opinion, has no application to the facts of the present case. The section lays down that, subject to certain prior claims, "a registered society shall be entitled to priority to other creditors to enforce any outstanding demand due to the society from a member or past member—(a) in respect of the supply of seed or manure or of the loan of money for the purchase of seed or manure . . . ; (b) in respect of the supply of cattle, fodder for cattle, agricultural or industrial implements or machinery, or raw materials for manufacture, or of the loan of money for the purchase of any of the foregoing things . . ." Now, firstly, in the case before us there is no outstanding demand due to a society from a member or past member. This is a case which is concerned with money being due to the District Co-operative Bank from the Murlipur Co-operative Society on account of loans having been advanced by the former to the latter. Secondly, the conditions laid down in clauses (a) and (b) of the section are not present. No such allegation was made in the court below and there is absolutely no evidence on the point. Section 19, therefore, cannot apply.

The next argument advanced is that as the Collector is required to recover the money due to the District Co-operative Bank under the award as if it were an arrear of land revenue, the District Co-operative Bank is entitled to priority over Panna Lal and is entitled to get an order from the civil court calling upon Panna Lal to pay back

1939

PANNA LAL
v.
COLLECTOR
OF MEERUT

the money which he has realised by sale of the crops. In our opinion this argument too is without force. All that rule 137(i) lays down is that the Collector can adopt the same methods for the realisation of the money as he can adopt for the recovery of an arrear of revenue; in other words, that he can adopt such of the processes laid down in section 146 of the U. P. Land Revenue Act as may be applicable. In our opinion this does not invest the debt due to the District Co-operative Bank with the character of land revenue due to the Crown. It merely provides a summary procedure for the realisation of the money. The method or procedure which can be adopted for the recovery of the money is one thing, and the substantive right of priority is another.

Learned counsel appearing for the respondent next cited section 233(m) of the U. P. Land Revenue Act. The relevant portion of that section runs thus: "No person shall institute any suit or other proceeding in the civil court with respect to . . . claims connected with, or arising out of, . . . any process enforced, . . . on account of any sum which is . . . realisable as revenue." Panna Lal, however, has not instituted any suit or other proceeding in the civil court. He has not done anything which can be said to come within the bar laid down in the section. In our opinion this section has no application whatsoever to the facts of the case before us.

The last argument advanced on behalf of the respondent is that the District Co-operative Bank is entitled to rateable distribution and that the Collector must be taken to have asked for rateable distribution by his letter of 28th May, 1937, and reference is made to section 73 of the Civil Procedure Code. We cannot accept this argument. None of the conditions laid down in section 73 of the Code of Civil Procedure is present in this case. No assets were held by the court below. No application had been made to that court for the execution of a decree either by the District Co-operative Bank or by the Collector. This argument also therefore fails.

For the reasons given above we allow this petition in revision and set aside the order of the learned Munsif, dated the 26th July, 1937. The applicant Panna Lal will have his costs throughout.

1939

PANNA LAL
v.
COLLECTOR
OF MEERUT

APPELLATE CIVIL

Before Justice Sir Edward Bennet and Mr. Justice Verma
BANWARI LAL (PLAINTIFF) v. RAM GOPAL (DEFENDANT)
AND IMIRTI (PLAINTIFF)*

1939

December, 1

Civil Procedure Code, order XXIII, rule 3—Adjustment of suit—Agreement between parties that suit should be decreed if the court upon examining the plaintiff found that she was not deaf and dumb—Decree by consent of parties—Appeal—Civil Procedure Code, section 96(3).

In a suit for possession of property by right of inheritance under the Hindu law the main defence was that the plaintiff had been born deaf and dumb and so was excluded from inheritance. After one witness had been partly examined, the parties came to terms and stated to the court that they had agreed that if upon examining the plaintiff the court found that she was not quite deaf and dumb, her claim should be decreed. The court accordingly examined her, found that she was not quite deaf and dumb, and decreed her suit: *Held*, that the decree passed in these circumstances was in essence a consent decree, based on an agreement between the parties which amounted to a compromise, and no appeal lay against that decree.

Mr. Panna Lal, for the appellant.

Messrs. G. S. Pathak and S. N. Seth, for the respondents.

BENNET and VERMA, JJ.:—The appellant Banwari Lal was, as the plaint stood after amendment, plaintiff No. 1 in the suit. Mst. Imirti, who has been impleaded as a *pro forma* respondent to this appeal, was plaintiff No. 2. The lower appellate court has set aside the decree of the Subordinate Judge and has remanded the suit "for decision according to law". The appeal is directed against this order of remand.

One Shyam Sundar Lal was at the time of his death, which occurred in 1926, the sole owner of certain pro-

*First Appeal No. 238 of 1937, from an order of B. R. James, District Judge of Budaun, dated the 19th of July, 1937.