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High Court (Straight, J., and Duthoit, J.,) dismissed the appeal, under the following order:—

“ We are of opinion that the 1880 proceedings in the Court of the Subordinate Judge were erroneously called proceedings in review of judgment; and as substantial justice appears to have been done in them, we think it unnecessary to make any order in this respect.”

The defendants subsequently applied to the High Court for leave to appeal to Her Majesty in Council from its order of the 23rd June, 1880.

Munshi *Hanuman Prasad* and Maulvi *Mehdi Hasan*, for the defendants.

Mr. *Niblett* and Munshi *Kashi Prasad*, for the plaintiffs.

The Court (STRAIGHT, J., and OLDFIELD, J.,) made the following order:—

STRAIGHT, J.—The order of this Court passed upon the 23rd June last virtually dismissed the appeal on the ground that no appeal lay from the order of the Subordinate Judge, which erroneously styled an application to have judgment and decree passed upon the basis of the award that had been filed as being one for review. In our opinion no final decree has as yet been passed on the arbitration proceedings by this Court, which would authorise an appeal to Her Majesty in Council, and we accordingly reject the application with costs.

Application rejected.

Before Mr. Justice Straight and Mr. Justice Oldfield.

GANGA (JUDGMENT-DEBTOR) v. MURLI DHAR (DECREE-HOLDER)*

Execution of decree—Compromise—Contract superseding decree.

A judgment-debtor, against whom a decree for money was in course of execution, presented a petition to the Court executing the decree in which it was stated that a part of the money payable under the decree had been paid; that it had been agreed that a part of the balance should be set-off against a debt due to the judgment-debtor to be realized by the decree-holder, and the remainder should be paid by the judgment-debtor by certain instalments; and that, if default were made in payment of any one instalment, the decree-holder should be at liberty to execute the decree for the whole amount, and the judgment-debtor asked the Court

* Second Appeal, No. 67 of 1881, from an order of S. M. MOON, Esq., Judge of Aligarh, dated the 23rd June, 1881, reversing an order of Maulvi Mubarak-ul-Ish, Munsif of Jalesar, dated the 3rd May, 1881.

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to sanction the arrangement. The decree-holder expressed his assent to the arrangement, and the Court recorded a proceeding reciting the arrangement, and releasing from attachment property of the judgment-debtor which had been attached. Default having been made, the decree-holder applied for execution of the decree. *Held* that the petition of the judgment-debtor set out above did not amount to nor was it any evidence of a new contract superseding the decree, and the decree might be executed. *Debi Rai v. Gobul Prasad* (1) distinguished.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of Oldfield, J.

The *Junior Government Pleader* (Babu Dwarka Nath Banarji), for the appellant.

Babu Oprokash Chandar Mukarji, for the respondent.

The Court (STRAIGHT, J., and OLDFIELD, J.,) delivered the following judgments :—

OLDFIELD, J.—Murlī Dhar obtained a decree against Ganga, appellant, on the 9th March, 1875, for Rs. 900 with interest to date of payment at Rs. 8 per cent. He took out execution on the 26th May, 1876, and in course of the proceedings the judgment-debtor filed an application to the effect that Rs. 617-2-0 had been paid, and there remained due a sum of Rs. 498-10-6, which it had been agreed should be satisfied by the decree-holder realizing from one Moti Ram Rs. 315, the price of corn, for the sale of which the judgment-debtor had obtained a decree, and by the judgment-debtor paying the balance to the decree-holder by half-yearly instalments of Rs. 50 each, and that in case of any default in paying an instalment, the decree-holder should be at liberty to realize the entire sum due at once with interest, and the judgment-debtor asked for the sanction of the Court to the arrangement, and stated that certain property named was pledged for the amount. The decree-holder by his pleader signified his assent to the arrangement, and the Court executing the decree drew up a proceeding on the same day reciting the arrangement, and ordered that the property under attachment should be released. Failure to pay instalments having taken place, the decree-holder applied for execution of his decree, and the question before us is, whether this arrangement is to be considered in the light of a new contract which has superseded the

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decree and the latter has in consequence become incapable of execution.

I concur with the Judge in holding that there is no such supersession of the decree, and that it may be executed. We have to see what the *bonâ fide* intention of the parties was, and where the arrangement contains nothing materially at variance with the decree, but is consistent with it, and is made obviously with the object of securing and facilitating its execution, we cannot assume that the parties have entered into a new contract in supersession of the decree. In this case it was the judgment-debtor who moved the Court by asking its sanction to terms for satisfaction of the decree which the decree-holder had accepted, and the Court appears to have given its sanction. The terms offered and accepted were in the interests of the judgment-debtor, and amount to nothing more than allowing him time to satisfy the decree; and the hypothecation of property was made with a view to secure the decree-holder from any loss which the discontinuance of his execution by removing the attachment made under it might entail. Had there been an intention to substitute a new contract, it is reasonable to suppose pains would have been taken to execute a properly stamped and registered deed. In fact what was done was only what s. 210 of the present Civil Procedure Code allows in express terms; the decree as altered by the arrangement to pay by instalments sanctioned under s. 210 can now be executed; but we are not asked to execute the decree in its new form, but in that in which it was passed, and I can see no objection to such a course.

Our attention was called to the Full Bench ruling of this Court in *Debi Rai v. Gokul Prasad* (1). On the facts of that case it was held that the agreement could not be executed as a decree, but the present case is distinguishable. We are not asked to execute the agreement, and in *Debi Rai v. Gokul Prasad* (1) the agreement varied the decree in the matter of interest.

S. A. No. 499 of 1880 (2), decided by this Court on the 23rd August, 1880, and *Darbha Venkamma v. Rama Subbarayadu* (3), are in support of the view I take. I would dismiss the appeal with costs.

(1) I. L. R. 3 All. 585 (2) Not reported.
(3) I. L. R., 1 Mad. 387.

STRAIGHT, J.—I concur with my Brother Oldfield that the petition of the 26th May, 1876, does not amount to, nor is it evidence of, any new contract in supersession of the decree of the 9th March, 1875. It is obvious that the decree-holder-respondent never intended to abandon his judgment-rights to execution, for after the arrangement had been made with the debtor-appellant, he applied for execution of *his decree* on the 26th May, 1878, and his present application of the 22nd March, 1881, is in similar terms. It is in this respect that the case in appeal before us is so clearly distinguishable from the Full Bench authority quoted at the hearing. The appeal should be dismissed with costs.

Appeal dismissed.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

DANNO (PLAINTIFF) v. DARBO AND ANOTHER (DEFENDANTS)*

Hindu law—Mitakshara, ch. i, s. iii, v. 11, and ch. ii, s. xi, v. 13—Daughters, right of succession to father's estate—Meaning of "unprovided" for.

The estate of a deceased Hindu, governed by the law of the Mitakshara, was in the possession of one of his daughters, who was in poor circumstances. His other daughter, who was well off and possessed of property, claimed to share in such estate, contending, with reference to the law of the Mitakshara, that, as no provision had been made for her by her father, she was "unprovided" for, within the meaning of that law, and therefore entitled to share in such estate. *Held* that such expression must be construed irrespective of the sources of provision or non-provision.

ONE Anta, a Hindu, governed by the law of the Mitakshara, died possessed of certain land. He left a widow, Tulsha, and three daughters, Danno, Birji, and Darbo. Tulsha succeeded to such land on her husband's death. On her death, which occurred in October, 1879, Darbo, who resided with her, had her name recorded in respect of such land in the revenue registers. Subsequently, a person who held a decree against Tulsha caused a portion of such land to be sold in execution thereof, such portion being purchased by one Mannu. In January, 1881, Danno and Birji instituted the present suit against Darbo and Mannu in which they claimed possession of two-thirds of such land as heirs to their deceased

* Second Appeal, No. 735 of 1881, from a decree of H. G. Keene, Esq., Judge of Meerut, dated the 5th April, 1881, affirming a decree of Rai Bakhtawar Singh, Subordinate Judge of Meerut, dated the 14th February, 1881.

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