

1882

KISHNA RAM
v.
HINGU LAL.

On appeal to the High Court the plaintiff contended that an appeal by the intervenors to the Collector did not lie, and consequently the Collector had exercised a jurisdiction not vested in him in entertaining their appeal and setting aside the Assistant Collector's decree, and his decree should be set aside.

Munshi *Sukh Ram*, for the appellant

The *Senior Government Pleader* (*Lala Juala Prasad*), for the respondents.

The judgment of the Court (STRAIGHT, J., and OLDFIELD, J.,) was delivered by

STRAIGHT, J.—We are of opinion that no appeal lay by the intervenor from the decision of the Deputy Collector to the Collector, and, in so far as the Collector entertained the objections of the intervenor, he acted beyond his powers. But as between the zamindar plaintiff and the defendant tenant, the decision of the Assistant Collector of the second class was appealable to the Collector under s. 183 of the Rent Act, 1873. There was no question then before the Collector in which the proprietary title to land between parties making conflicting claims thereto had to be determined, for, as we have already remarked, the intervenor could not properly be a party to the proceeding in his Court. All the Collector could decide was as to whether the plaintiff zamindar was or was not entitled to so much rent, and, to the extent that his judgment travels beyond this, it is without force or effect. Holding this view, we think the Judge had no jurisdiction to entertain the appeal, nor has he decided any question of proprietary right that would justify an appeal to this Court. The appeal is accordingly dismissed with costs as unentertainable.

Appeal dismissed.

1882
January 30.

Before Mr. Justice Straight and Mr. Justice Oldfield.

BAMADHIN MAHTON AND OTHERS (DEFENDANTS) v. GANESH
AND ANOTHER (PLAINTIFFS).*

Appeal to Her Majesty in Council—“Final decree”—Act X of 1877 (Civil Procedure Code), s. 595 (α).

Certain persons interested in an award applied under s. 525 of the Civil Procedure Code to have it filed in Court. The Court made an order under s. 526 “that

* Application, No. 11 of 1881, for leave to appeal to Her Majesty in Council.

1882

 RAMADHIN
 MAHTON
 v.
 GANESH.

the claim of the plaintiffs be decreed." The defendants appealed to the High Court from this "decree." The High Court held that the appeal would not lie; and suggested to the plaintiffs to apply to the lower Court to give judgment according to the award, and a decree to follow it. Thereupon the plaintiffs made an application to the lower Court of the nature suggested, but styled it one for review of judgment. The lower Court granted the so-called review of judgment. The defendants appealed from the order of the lower Court, contending that the "review of judgment" had been improperly granted. On the 23rd June 1880 the High Court held that the order of the lower Court was not appealable, not being one passed on review of judgment, but on an application to give judgment and decree in accordance with an award which had been filed in Court. The defendants applied for leave to appeal to Her Majesty in Council from the order of the High Court of the 23rd June 1880. Held that such order was not a "final decree" within the meaning of s. 595 (a) of the Civil Procedure Code, and therefore it was not appealable to Her Majesty in Council.

IN 1878 two persons named Ganesh and Mahesh applied, under s. 525 of the Code of Civil Procedure, to the Subordinate Judge of Gorakhpur to have a certain award made on a private reference to arbitration filed in Court. Notice to show cause was served on the other side, and objections were made to the award being filed, on the ground that the arbitrator had determined matters not referred to arbitration; that the award was vague and incapable of execution; and that the arbitrator had been guilty of misconduct and corruption. The Subordinate Judge, after considering these objections, held that the award was valid; and on the 5th April, 1877, ordered "that the claim of the plaintiffs be decreed." Two of the defendants appealed to the High Court from the Subordinate Judge's "decree." The High Court (1), on the 17th November, 1879, held that no appeal lay from the Subordinate Judge's order, one of the Judges adding this instruction: "The Court below should be moved to give judgment in accordance with the award and a decree to follow it." On the 27th April, 1880, the plaintiffs made an application to the Subordinate Judge of Gorakhpur of the nature suggested by the High Court, but styled it one for review of judgment. On the 28th September, 1880, the Subordinate Judge granted the "review" prayed for. The defendants appealed to the High Court from the Subordinate Judge's order, contending that a review should not have been granted so long after the date of the original order. On the 23rd June, 1880, the

(1) See *Ramadin v. Mahesh*, I.L.R., 2 All. 471.

1882

RAMADHIN
MAHTON
v.
GANESH.

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.

1882

January 30.

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.