

1881
February 28.

CIVIL JURISDICTION.

Before Mr. Justice Spankie and Mr. Justice Oldfield.

SHADI AND ANOTHER (PLAINTIFFS) v. GANGA SAHAI (DEFENDANT).*

Questions for Court executing decree—Separate Suit—Adjustment of Decree—Act X of 1877 (Civil Procedure Code), ss. 244, 258.

S, alleging that a money-decree against him held by G had been adjusted out of court by a payment in cash and the delivery of certain property, and that M had notwithstanding such adjustment applied for execution of such decree and recovered the amount thereof, as the Court executing such decree had refused to determine whether it had been satisfied on the ground that such adjustment had not been certified, sued M for the money which he had paid him out of court. *Held* that the suit was not barred by the provisions of s. 244 of Act X of 1877 or of s. 258 of that Act. The last paragraph of s. 258 means that the Court executing the decree shall not recognize an uncertified payment or adjustment out of court. It does not prohibit a suit for money paid to a decree-holder out of court, and the payment of which, not being certified, could not be recognized, and which the decree-holder had not returned, but had misappropriated, by taking out execution of the decree a second time and securing the amount in full through the Court.

THIS was an application to the High Court by the plaintiffs in a suit for revision under s. 622 of Act X of 1877 of the decree of the appellate Court in the case. The facts of the case are sufficiently stated in the judgment of the High Court.

Pandit *Nand Lal*, for the plaintiffs.

Babu *Oprokash Chandar Mukarji*, for the defendant.

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

SPANKIE, J.—The defendant held a decree against the plaintiffs, who say that they satisfied it by payment of Rs. 50 in cash and by giving a bullock worth Rs. 30, and that the decree was returned to them: but the defendant executed the decree a second time against them, and the Court disallowed the objections of plaintiffs that it had been fully satisfied out of court, and that they held the decree. They now sue to recover the amount paid over to the defendants out of court. The defendant denies receipt of the

* Application, No. 68B. of 1880, for revision under s. 622 of Act X of 1877 of a decree of H. G Keene, Esq., Judge of Meerut, dated the 10th May, 1880, reversing a decree of Syed Zakir Husain, Munsif of Meerut, dated the 14th April, 1880.

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money and delivery of the bullock : the decree was lost and thus came into possession of the plaintiffs. The Munsif, holding that the facts alleged by the plaintiffs had been fully established, decreed the claim. In appeal the Judge held that s. 244 distinctly prohibits the decision by separate suit of "any questions arising between the parties relating to the discharge or satisfaction of the decree". In this case the Judge observes it is contended that the decree had been satisfied out of court, though without the Court being certified, and that the present execution was in fact making the debtors pay a second time : this plainly was a question relating to the matters as to which the suit is not to be brought. He therefore decreed the appeal and reversed the decree of the first Court.

It is urged by the plaintiffs on the revision side that the decision is erroneous : the money now in suit was paid out of court by private arrangement, and not in execution of the decree, and s. 244 of Act X. of 1877 does not apply. S. 244 does not, we think, apply to the case before us. The Court executing the decree did not determine whether or not there had been any satisfaction of the decree in the mode alleged by the judgment-debtors, because there had been no certification of such payment to the Court whose duty it was to execute the decree, as is required by the terms of s. 258 of Act X. of 1877 as amended by Act XII. of 1879. The Court therefore did not recognize any such payment or arrangement. It is the essence of s. 244 of the Code that there should be a determination of one of the questions (a), (b), and (c). The question as to the satisfaction and discharge of the decree would have fallen under (a) and (c) of the section, but it could not be determined, as the Court, for the reasons given above, could not recognize any such discharge or satisfaction even if made.—*Gunamain Dasi v. Pran Kishori Dasi* (1). The determination of any question under the section must be a judicial determination, and the judgment must be one which if not appealed against would be definitive, or which, if confirmed by some other authority, would be definitive, thus putting an end to a suit by giving redress to one party, or by discharging the other party. It is on this account that no separate suit is permitted, but the order passed

(1) 5 B. L. B., 223.

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being a decree, it is appealable as such.—(See s. 2, “decree,” and s. 540, Act X. of 1872, as amended). “Decree” means the formal expression of an adjudication upon any right claimed or defence set up in a Civil Court, where such adjudication, so far as the Court expressing it, decides the suit or appeal. It was contended on behalf of the defendant that the words “any Court” referred to in s. 258 of the Code precludes any subsequent assertion in a suit like the present of any payment or adjustment of a decree. The words are: “No such payment or adjustment shall be recognized by any Court, unless it has been certified as aforesaid.” This means that the Court executing the decree shall not recognize such payment or adjustment, nor shall any Court do so which may have to deal with any averment of such payment or adjustment of a decree during the pendency of execution-proceedings. But where any Court executing a decree, or any Court reviewing as a Court of appeal the orders of such Court, refuses to grant redress or entertain the question of payment or satisfaction, because it was not certified to the Court executing the decree, there is no prohibition against a suit for the recovery of money which the plaintiff avers was paid to the decree-holder out of Court, but which could not be admitted as a payment in the absence of certification to the Court executing the decree, and which the decree-holder had not returned, but misappropriated, by taking out a second execution of his decree and securing the amount in full through the Court. A person who, by private agreement out of Court between the decree-holder and himself, satisfies a decree does so under an implied agreement that the satisfaction of the decree shall be certified to the Court, and that he shall be relieved from further process in regard to it; and if the money paid is not applied to the satisfaction of the decree but for other purposes, the decree-holder has committed a breach of such agreement, and has acted, as is alleged in this case, fraudulently. The suit is not one brought to recover the money paid in the second execution, but one to recover money which had been paid on the first occasion, but which had not been used for the purpose of satisfying the decree owing to the fraud committed by the decree-holder. Upon this view the case of *Soojun Mundul v. Wooseer Mundul* (1) is

(1) 6 W. R., Civil References, 20.

altogether in point. Again the decree-holder taking payment out of court must be regarded as a trustee for the judgment-debtor of the money paid to him. This is the view entertained by the Full Bench of the Presidency Court in the case already cited. That decision notices the case of *Arunachella Pillai v. Appavu Pillai* (1). In that case the Court was not unanimous in taking a different view from that of the Presidency Court, and an examination of it shows that the claims were not identical, as in the Madras suit the plaintiff sued to recover money that was levied in the execution of the decree by the Court, whereas in the Presidency case, as in the one before us, the plaintiff sued to recover the money first paid, for which, as the Court held, the decree-holder must be regarded as a trustee for the plaintiff, and as such he was liable to refund it. Such being our view of the case, we must decree the appeal, and as the Judge has thrown out the case on a preliminary point of law, we reverse his decree and remand the case for re-trial on the merits. Costs will abide the result.

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Cause remanded.

APPELLATE CIVIL.

 1881
 March 4.

Before Mr. Justice Pearson and Mr. Justice Oldfield.

JUALA SINGH AND ANOTHER (PLAINTIFFS) v. NARAIN DAS (DEFENDANT).*

Filing private award in Court—Amendment of plaint taking case out of scope of Ch. 37 of Act X of 1877—Act X of 1877 (Civil Procedure Code), ss. 520(a), 525, 526—Appeal.

By the amendment of the plaint, a case under s. 525 of Act X of 1877 was taken out of the scope of Chapter XXXVII of that Act. *Held* that, this being so, the decree of the Court of first instance was appealable.

Held also, where a private award determined a matter not referred to arbitration, that a claim under s. 525 of Act X of 1877 that such award should be filed in Court was properly dismissed.

THE plaintiffs, who claimed a right of pre-emption in respect of certain buildings purchased by the defendant, and the defendant,

* Second Appeal, No. 979 of 1880, from a decree of R. M. King, Esq., Judge of Saharanpur, dated the 9th July, 1880, reversing a decree of Munsif Baij Nath, Munsif of Muzaffarnagar, dated the 2nd March, 1880.

(1) 3 Mad. H. C. Rep., 188.