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therefore of opinion that the order of the Division Bench must be affirmed.

STRAIGHT, J.—I see no reason to alter the opinion I expressed upon this case when it was before the Division Bench of which I was a member, and I regret that I am constrained to hold a view at variance with the rest of the Court. The impropriety in conduct or bad faith of the plaintiffs-appellants has as far as I can see no bearing one way or the other upon the plain legal question raised by this appeal, namely,—Can the rights and interests of the other members of a joint Hindu family be affected by sale in execution of a decree against the father alone for enforcement of lien under a bond executed by him charging the whole joint property, when such decree has been passed in a suit in which the father was sole defendant and to which none of the other members of the joint family either personally or by formally constituted representatives were made parties. As I expressed my views upon the matter at length in my former judgment it is unnecessary to recapitulate them now, or to do more than say that I adhere to them and to the order which I was then of opinion should be passed on the appeal.

Appeal dismissed.

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January 23.

APPELLATE CIVIL.

Before Mr. Justice Spankie and Mr. Justice Straight.

BINDESHRI CHAUBEY AND OTHERS (PLAINTIFFS) v. NANDU (DEFENDANT).*

Return by Appellate Court of plaint for amendment or presentation to proper Court—Appeal from Order—Second Appeal to High Court—Act X of 1877 (Civil Procedure Code), ss. 540, 588 (6).

The lower appellate Court (Subordinate Judge) decided on appeal by the defendant from the decree of the Court of instance (Munsif) that the Court of first instance had no jurisdiction to entertain the suit, as the value of the subject-matter of the suit exceeded the pecuniary limits of its jurisdiction; and ordered that "the appellant's appeal be decreed, the decision of the Munsif be reversed, and the record of the case be sent to the Munsif to return the plaint to the plaintiff for presentation to the proper Court." The plaintiff appealed to the High Court

* Second Appeal, No. 61 of 1880, from a decree of Hakim Rahat Ali, Subordinate Judge of Gorakhpur, dated the 21st July, 1880, reversing a decree of Maulvi Abdul Razzak, Munsif of Deoria, dated the 19th March, 1880.

from such order as an order returning a plaint to be presented to the proper Court. Held that such order could not be regarded as one to which art. (6) of s. 588 of Act X of 1877 was applicable. That relates to orders returning plaints for amendment or to be presented to the proper Court passed by a Court of first instance, and not to an order by an Appellate Court upon an appeal to it from the decree of a Court of first instance on general grounds. The plaintiff's proper course was to have preferred a second appeal.

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THE defendant in this suit, which was instituted in a Munsif's Court, set up as a defence to it that the value of its subject-matter exceeded one thousand rupees, and consequently the jurisdiction of the Munsif did not extend to the suit. The Munsif decided that the value of the subject-matter of the suit did not exceed one thousand rupees and the suit was therefore cognizable by him; and proceeded to decide the suit on the merits and gave the plaintiffs a decree. On appeal by the defendant the lower appellate Court decided that the value of the subject-matter of the suit exceeded one thousand rupees and the suit was not cognizable by the Munsif, and directed "that the appellant's appeal be decreed, the decision of the Munsif be reversed, and the record of the case be sent to the Munsif to return the plaint to the plaintiffs for presentation in the proper Court."

The plaintiffs thereupon preferred an appeal to the High Court impugning the decision of the lower appellate Court as to the value of the subject-matter of the suit, appealing as from an order.

Mr. Conlan, for the appellants.

Babu Baroda Prasad, for the respondent.

The High Court (SPANKIE, J., and STRAIGHT, J.) delivered the following judgment:—

STRAIGHT, J.—Following our decision in First Appeal from Order No. 130 of 1880 (1), we do not think that the decision of the Subordinate Judge upon the appeal before him,—“that the appellant's appeal be decreed, the decision of the Munsif reversed, and the record of the case be sent to the Munsif to return the plaint to the plaintiff for presentation to the proper Court”—can be regarded as an order to which art. (6) of s. 588 of Act X of 1877, as amended by Act XII of 1879, is applicable. It appears to us that this

(1) Unreported.

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relates to orders "returning plaints for amendment or to be presented to the proper Court" passed by the Court of first instance, and not to a decision of an Appellate Court upon an appeal to it against the judgment of a first Court on general grounds. The proper course for the appellants to have pursued was to file a special appeal, and accordingly this second appeal as from an order must be dismissed with costs. But we direct that the memorandum of appeal be returned to the appellants for filing, as a special appeal, upon payment of the requisite court-fees.

Appeal dismissed.

Before Mr. Justice Pearson and Mr. Justice Spankie.

SIRDAR SAINRY (PLAINTIFF) v. PIRAN SINGH (DEFENDANT).*

Absent co-sharer—Wajib-ul-arz—Trust.

S and his brother owned an eight annas share of a village, and H and D owned the other eight annas share, the parties being related to each other by blood. In 1865 (Sambat 1921), at the settlement of the village, the following statement was recorded by the settlement officer in the *wajib-ul-arz* at the instance of H and D, with whom the settlement was made, S and his brother being absent from the village and having been absent for some ten years:—"We H and D are equal sharers of one eight annas and S and (his brother) of the other eight annas in the village according to descent: ten years ago S and (his brother) went away into Orai; their present residence is not known: they have not left woman, child, or heir of any kind in the village: on that account the entire sixteen annas of the village are in possession of us H and D: at the time of the preparation of the *khawat* we made a gift of four annas of our own eight annas to P and have given him possession of four annas of the eight annas belonging to S and (his brother), keeping the remaining four annas in our own possession: when S and (his brother) return to the village we three who are in possession shall give up the eight annas share of the aforesaid persons." In March 1880 S sued P for possession of the four annas mentioned in the *wajib-ul-arz* as having been made over to him by H and D out of the eight annas share belonging to S and his brother. He based his suit upon the *wajib-ul-arz*, but did not expressly state that the share in suit had been intrusted to H and D on the understanding that it should be returned to him when he reclaimed it. The lower appellate Court dismissed the suit as barred by limitation on the ground that P's possession of the share in suit became adverse in 1866 or 1867, more than twelve years before the institution of the suit, when S, having returned to the village, had claimed the share and P had refused to surrender it. On second appeal it was contended by S that under the terms of

* Second Appeal, No. 827 of 1880, from a decree of J. Liston, Esq., Deputy Commissioner of Lalitpur, dated the 17th June, 1880, reversing a decree of W. J. Greenwood, Esq., Extra Assistant Commissioner of Lalitpur, dated the 13th April, 1880.