

1883
February 24.

Before Sir Robert Stuart, Kt, Chief Justice, Mr. Justice Straight, Mr. Justice Oldfield, Mr. Justice Brodhurst, and Justice Tyrrell.

MADHO PRASAD (JUDGMENT-DEBTOR) *v.* HANSA KUAR (DECREE-HOLDER)
AND KANHAI AND OTHERS (AUCTION-PURCHASERS).*

MAN KUAR (JUDGMENT-DEBTOR) *v.* RAM KISHORI (DECREE-HOLDER).†

Execution of decree—Transfer to Collector—Appeal to High Court from orders of Collector—Jurisdiction—Civil Procedure Code, s. 320.

Orders passed by a Collector in the exercise of the powers conferred on him under s. 320 and the following sections of the Civil Procedure Code, relating to the execution of a decree of a Civil Court, after transfer of the decree to him under s. 320, are not appealable to the High Court.

Held, therefore, that the order of a Collector disallowing an application by the judgment-debtor that the amount of the decree might be satisfied by the temporary transfer of his immoveable property, and ordering the sale of such property, and the order of a Collector confirming a sale, were not appealable to the High Court.

THESE were two appeals in which the same question arose, *viz.*, whether an appeal would lie to the High Court from orders passed by a Collector under the operation of the rules prescribed by the Local Government under s. 320 of the Civil Procedure Code, contained in Notification No. 671 of 1880, dated the 30th August, 1880. In each case this question was referred to the Full Bench by the Divisional Bench before which the appeal came. In F. A. No. 22 of 1882 the appeal was from an order by a Collector made under those rules confirming a sale in execution of a decree. In F. A. No. 66 of 1882 the appeal was from an order of a Collector made under the same rules disallowing an application by a judgment-debtor, praying that the amount of the decree might be satisfied by a temporary transfer of the judgment-debtor's property, and ordering the sale of such property.

Babu *Ram Das Chakarbatî* and *Lala Jokhu Lal*, for the appellant,

Mr. Howell, the Senior Government Pleader (*Lala Juala Prasad*), and *Munshi Hanuman Prasad*, for the respondents, in F. A. No. 22.

Babu *Ratan Chand* for the appellant,

Munshi Hanuman Prasad, for the respondent, in F. A. No. 56.

* First Appeal No. 22 of 1882, from an order of J. D. Latouche, Esq., Collector of Banda, dated the 19th October, 1881.

† First Appeal No. 66 of 1882, from an order of J. Smith, Esq., Collector of Etawah, dated the 5th May, 1882.

The Full Bench delivered the following opinion:—

STUART, C. J., and STRAIGHT, OLDFIELD, BRODHURST and TYRELL, JJ.—These two references raise the same general question, and may be disposed of together. The question is whether an appeal will lie to the High Court from orders passed by a Collector in exercise of the powers conferred on him under s. 320 and the following sections of the Code of Civil Procedure relating to the execution of a decree of a Civil Court after transfer of the decree to him under s. 320. In F. A. No. 66 the Collector disallowed an application of the judgment-debtor asking that the amount of the decree might be satisfied by temporary transfer of the judgment-debtor's immoveable property, and he ordered the sale of the immoveable property, and an appeal has been preferred to the High Court from the Collector's order. In F. A. No. 22 an appeal has been filed against the Collector's order confirming the sale.

If we examine the provisions of the sections of the Code relating to the transfer of Civil Court decrees to the Collector for execution, we find no provision for an appeal to the Civil Court from the Collector's order: the only provision for an appeal is that given by s. 322D, but that is from the decisions by a Civil Court of disputes arising under ss. 322B. and 322C.

There is no doubt an appeal from orders made under s. 244 of the Code, which are of the nature of decrees, with reference to s. 2; and from orders confirming or setting aside a sale under s. 312; but these sections do not apply to the proceedings of a Collector under s. 320 and the following sections of the Code.

S. 244 has reference to a Civil Court executing a decree, and only orders by a Civil Court under s. 244 are decrees within the meaning of the definition of decree in s. 2 so as to give a right of appeal from them. The Collector when executing a decree transferred to him is not a Civil Court within the meaning of the section, so that orders made by him in execution can be treated as governed by the provisions of s. 244.

In the same way the Collector's order confirming a sale cannot be held to be made under s. 312 so as to allow of an appeal under s. 588. The Local Government is empowered by s. 320 to prescribe rules for transmitting the decree from the Court to the Col-

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lector, and for regulating the procedure of the Collector and his subordinates in executing the same and for re-transmitting the decree from the Collector to the Civil Court, and has prescribed rules accordingly which embrace rules for holding sales, and it is under these rules that the Collector's order confirming a sale is made and not under s. 312, which refers to orders by a Civil Court.

In fact there seems no doubt that it was the intention of the Legislature to exclude the jurisdiction of the Civil Courts in matters relating to the exercise by a Collector of the powers conferred on him for the execution of decrees transferred to him, under the sections of the Civil Procedure Code with which we are dealing. S. 325A is to the effect that so long as the Collector can exercise or perform in respect of the judgment-debtor's immoveable property or any part thereof any of the powers or duties conferred or imposed on him by ss. 322 to 325, both inclusive, no Civil Court shall issue any process against such property or part in execution of a decree for money, nor during the same period shall a Civil Court issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under s. 323.

We only cite these provisions as in some measure indicating the policy of the Legislature. There are also provisions which show that the Collector is made subject to the Chief Controlling Revenue Authority in the execution of his duties in the matter of Civil Court decrees transferred to him for execution (s. 323).

Our answer to these references is therefore that an appeal⁷ will not lie to the High Court from the orders of the Collector in the cases referred.

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January 31.

APPELLATE CIVIL.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Tyrrell.

INTIZAM ALI KHAN AND ANOTHER (JUDGMENT-DEBTORS) v. NARAIN SINGH
(PURCHASER).*

Sale in execution of decree—Civil Procedure Code, s. 306—Failure to pay deposit of purchase-money required by that section.

The person declared to be the purchaser of property put up for sale in execution of a decree did not, as required by s. 306 of the Civil Procedure Code, pay

⁷ First Appeal No. 104 of 1882, from an order of Pandit Jagat Narain, Subordinate Judge of Farukhabad, dated the 29th May, 1882.