

1882

RADHA PRA-
NAD SINGH
v.
RAJENDRA
KISHORE
SINGH.

that the Legislature, whilst providing for those incidents, should at the end of the Chapter make provision also for "other cases of assignment, creation or devolution of any interest pending the suit." But it is clear to us that a deed of compromise filed in the Court during the pendency of a suit cannot be regarded as an "assignment" within the meaning of s. 372. No "addition" or "substitution" of parties, as contemplated by that section, can be made in a case like the present, in which the entire contention of the plaintiff amounts to a request that his name should be substituted for that of one of the defendants who has joined the compromise. This shows the anomaly to which the contention for the appellant naturally leads. We have no hesitation in holding that the "cases of assignment, creation or devolution" contemplated by s. 372 are those in which "the person to whom such interest has come" must be arrayed on the same side in the suit as "the person from whom it has passed"—an interpretation which is in keeping with the contemplation of all the other sections of Chapter XXI.

Whatever the legal effect of the compromise in this case may be, that effect must be the subject of consideration in the final decision of the case. No effect can be given to it at this stage of the suit; and since we agree with the Subordinate Judge in holding that s. 372 has no application to this case, we dismiss the appeal with two sets of costs.

Appeal dismissed.

Before Mr. Justice Brodhurst and Mr. Justice Mahmood.

1882
August 29.

HOTI LAL (DECREE-HOLDER) v. HARDEO AND ANOTHER (JUDGMENT-DEBTORS).*

Execution of decree—Certificate for collection of debts—Act XXVII. of 1860—Application for execution by representative of deceased decree-holder—Objection to title—Order refusing to allow representative to take out execution until granted certificate—Appeal—Civil Procedure Code, s. 244.

On appeal from an order allowing an application by the legal representative of a deceased decree-holder for execution, the appellate Court, holding that the applicant must obtain a certificate under Act XXVII. of 1860 before he could take out execution of the decree, made an order directing that execution of the decree should be stayed until the applicant had obtained such certificate.

* Second Appeal No. 25 of 1882, from an order of L. B. Thorahill, Esq., Judge of Aligarh, dated the 11th April, 1882, reversing an order of Munshi Mata Khasab, Munsif of Aligarh, dated the 13th March, 1882.

Held that such order fell under s. 244 of the Civil Procedure Code, and was therefore appealable.

1882

HOTI LAL
v.
HARDRO.

Also, following the principle enunciated in *Lochin v. Ganga Prasad* (1), that the possession of a certificate under Act XXVII. of 1860 was not "an imperative condition precedent to the institution" of execution-proceedings by the representative of a deceased decree-holder; but that, where the judgment-debtor objects to the title of the person claiming to execute the decree, the Court should consider whether the objection is vexatiously raised or is a *bonâ fide* one.

THE appellant in this case applied, as the adopted son of one Lalji Mal, deceased, for execution of a decree held by the latter against the respondents in this case. The respondents objected to this application being granted, on the ground that the appellant was not the adopted son of Lalji Mal; that if he were, there were other heirs of Lalji Mal in existence, who should have joined in the application; and that before making the application the appellant should have obtained a certificate to collect the debts of Lalji Mal under Act XXVII. of 1860. Upon the questions whether the appellant was competent to apply for execution of the decree, and whether it was necessary for him to obtain a certificate under Act XXVII. of 1860 before doing so, the Court of first instance held that it was proved that the appellant was the adopted son and heir of Lalji Mal, and therefore he was "competent to apply for execution of the decree; and that, his heirship to and his adoption by Lalji Mal being proved, it was not necessary that the appellant should obtain a certificate under Act XXVII. of 1860, the possession of such a certificate not being indispensable. The Court therefore disallowed the objections of the respondents. On appeal, the lower appellate Court held that the question of the appellant's right of succession to Lalji Mal could not properly be decided in the execution department; and that until the appellant produced a certificate under Act XXVII. of 1860 authorizing him to collect the debts due to Lalji Mal's estate, execution of the decree should be stayed. The lower appellate Court therefore made an order directing the Court of first instance "to stay proceedings in execution and to allow Hoti Lal a proper period of grace to obtain a certificate to collect debts due to the estate of Lalji Mal, deceased, and to present it to the lower Court, before payment is exacted from the judgment-debtors at his instance."

1882

HOTI LAL
v.
HARDEO.

In second appeal the appellant contended that the lower appellate Court was wrong in holding that he must obtain a certificate under Act XXVII. of 1860 before he could be permitted to take out execution of the decree; and that the question whether he was competent, as the legal representative of the deceased decree-holder, to take out execution of the decree should be determined in this very case.

Munshis *Hanuman Prasad* and *Kashi Prasad*, for the appellant.

Mr. *Howell* and Babu *Jogindro Nath Chaudhri*, for the respondents.

The Court (BRODHURST, J. and MAHMOOD, J.) delivered the following judgment :

MAHMOOD, J.—The learned pleader for the respondent has urged a preliminary objection to the entertainment of this appeal. He contends that the order of the lower appellate Court did not fall under s. 212, Civil Procedure Code, as it did not finally dispose of the question as to the execution of the decree. But we have no hesitation in holding that orders of this nature fall within the purview of cl. (c), s. 244, Civil Procedure Code, and that this appeal was therefore rightly preferred.

As to the points raised in the appeal, we are of opinion that they have force. The case is governed by the principle of the rule laid down in a recent case—*Lachmin v. Ganga Prasad* (1)—by a Division Bench of this Court. Following the principle enunciated in that case, we hold that the possession of a certificate under Act XXVII. of 1860, is not “an imperative condition precedent to the institution” of execution proceedings by the representatives of a deceased decree-holder, but that in such cases the Court should consider whether the objections to execution are vexatiously raised or they are *bonâ fide* objections on the part of the judgment-debtor to the title of the person seeking to execute the decree. The determination of such questions naturally depends upon the merits of each case; but the view of the law taken by the lower appellate Court in this case has prevented it from considering the case on its merits. We therefore set aside the order of the lower appellate

(1) I. L. R., 4 All. 435.

Court, and decreeing this appeal remand the case to that Court, for disposal *de novo* with reference to the observations which we have made. The costs of this appeal will abide the result.

Cause remanded.

1882

HOTI LAL
v
HARDEO.

CRIMINAL REVISIONAL.

1882
September 25.

Before Mr. Justice Mahmood.

EMPRESS OF INDIA *v.* PITAM RAI.

False charge—Act XLV of 1860 (Penal Code), s. 211.

The actual institution of criminal proceedings on a false charge is essential to the application of the latter part of s. 211 of the Indian Penal Code, and if a person only makes a false charge, his case falls under the first part of the section irrespective of the fact that the false charge relates to "an offence punishable with death, transportation for life, or imprisonment for seven years or upwards."

THIS was a reference to the High Court by Mr. H. F. Evans, Officiating Sessions Judge of Bareilly, under s. 296 of the Criminal Procedure Code, 1872. It appeared from the Sessions Judge's referring letter that one Pitam Rai had been charged before a Magistrate with, and convicted of, having brought a false charge against one Parme, and punished under the first part of s. 211 of the Indian Penal Code. The Sessions Judge, being of opinion that the false charge related to an offence punishable with imprisonment for seven years, and that consequently the Magistrate was not competent to try Pitam Rai, but should have committed him for trial before the Court of Session under the latter part of s. 211, reported the case to the High Court for orders. It appeared from the record of the case that Pitam Rai had preferred the charge in question to a police officer, and that criminal proceedings had not been instituted against Parme in consequence of such charge.

Mr. Hill, for Pitam Rai, contended that, as criminal proceedings had not been instituted against Parme on the false charge made against him by Pitam Rai, the latter had not committed the offence punishable under the latter part of s. 211, and the case was therefore triable by the Magistrate.

MAHMOOD, J.—This reference relates only to the case of Pitam Rai, the appeal of the other prisoner, Gauri, having been disposed