

## APPELLATE CIVIL.

*Before Sir Louis Stuart, Knight, Chief Judge, and  
Mr. Justice Muhammad Raza.*

1926  
September,  
18.

CHANDRA KRISHNA AND OTHERS (PLAINTIFFS-APPELLANTS)  
v. MANNI LALL AND OTHERS (DEFENDANTS-RESPONDENTS).<sup>\*</sup>

*Jurisdiction of civil courts—Execution of decree transferred to Collector—Declaratory suit to have sale declared null and void, maintainability of—Civil Procedure Code, section 70.*

Where execution of a decree was transferred to the Collector under the provisions of rules made under section 70 of the Code of Civil Procedure, held, that the suit for a declaration to the effect that the sale was null and void because the sale officer had refused to carry out certain orders of the civil court was not maintainable in a civil court. Once the execution of the decree had been transferred to the Collector no civil court had authority in the matter. [I. L. R., 42 All., 275, followed.]

Mr. K. P. Misra and Mr. D. K. Seth, for the appellants.

Messrs. A. P. Sen and Niamatullah, for the respondent No. 1.

Respondent No. 2 absent.

STUART, C. J., and RAZA, J.:—The question before us for decision in this appeal is a simple one. Two decrees had been passed by the Munsif of North Unao for money relief. Execution was sought to be taken out of these decrees by attachment and sale of immovable property. The property in question was found to be ancestral property. Execution was, therefore, transferred to the Deputy Commissioner of Unao as Collector under the provisions of rules made

<sup>\*</sup> Second Civil Appeal No. 531 of 1924, against the decree, dated the 21st of August, 1924, of Jitendra Mohan Basu, Second Additional District Judge of Lucknow at Unao, affirming the decree, dated the 28th of May, 1923, of Tika Ram Misra, Subordinate Judge of Unao, dismissing the plaintiffs' suit.

under section 70 of the Code of Civil Procedure. The execution passed completely out of the hands of the civil court into the hands of the Collector. The date fixed for sale of this immovable property was the 20th of July, 1921. On the 19th of July, 1921, the sons of the judgment-debtors instituted a suit in the Court of the Subordinate Judge of Unao, for a declaration that their interest in the property in question were not liable to sale and applied to the Subordinate Judge to stay the sale in question. In our opinion the Subordinate Judge had no authority to stay the sale. We consider that once the execution of the decree had been transferred to the Collector no civil court had authority in the matter. A similar view was taken by a Bench of the Allahabad High Court in *Farhat-un-nissa Bibi v. Sundari Prasad* (1). Apart from this fact the Subordinate Judge of Unao never attempted to issue orders to the Collector. He issued a *rubkar*, apparently in error, to the Munsif of North Unao to stay the sale, being apparently under the erroneous impression that the sale was being carried out by the Munsif's court. The Munsif of North Unao then issued a *rubkar*, which appears to us to have meant nothing in particular, to the Collector requesting him to stay the sale, but before that *rubkar* reached the sale officer the sale had taken place. The appellants' suit was for a declaration which was in effect to declare the sale null and void because the sale officer had refused to carry out the orders of the Munsif of North Unao of the 19th of July, 1921. The lower court has correctly found that that suit was not maintainable. We dismiss this appeal with costs.

1926

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CHANDRA  
KRISHNA  
v.  
MANNI LALL.

*Appeal dismissed.*