

1925

SANT
SAHAI
v.
CHHUTAI
KURMI.

proper register to its original number and disposed of according to law. The appellant will be entitled to his costs in this Court in all events.

The costs in the lower court will abide the result.

Appeal dismissed.

Before Mr. Justice Wazir Hasan and Mr. Justice Gokaran Nath Misra.

KUNWAR LAL BAHADUR (OBJECTOR-APPELLANT) v. LALA BENI MADHO AND ANOTHER (DECREE-HOLDERS RESPONDENTS.)*

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Civil Procedure Code, sections 39 and 42 and order XXI, rule 48(1)—Attachment of salary—Court to which decree is transferred, powers of.

Where the court to which a decree had been transferred issued an order for the attachment of the salary of the judgement-debtor who was living beyond his jurisdiction in another district, *held*, that in view of the provisions of section 42 of the Code of Civil Procedure it cannot be contended that the power of attachment given by order XXI, rule 48(1) of the Code of Civil Procedure can only be exercised by the court which passed the decree and not by the court to which the decree was transferred under section 39 of the Code of Civil Procedure.

Mr. *Hardhian Chandra*, for the appellant.

Mr. *P. D. Rastogi*, for the respondents.

HASAN and MISRA, JJ.:—The respondents obtained a simple money-decree from the Court of the Subordinate Judge of Lucknow on the 17th of April, 1920 against four persons, one of whom was the appellant, Kunwar Lal Bahadur. On the 6th of April, 1921 the Court of the Subordinate Judge of Lucknow on an application being made to that

* Execution of Decree Appeal No. 67 of 1925, against the decree of Khurshed Husain, Subordinate Judge of Hardoi, dated the 12th of September, 1925.

effect by the decree-holders transferred the decree for execution to the Court of the Subordinate Judge of Hardoi. This was presumably done under the provisions of section 39 of the Code of Civil Procedure, 1908. Since the transfer execution proceedings in relation to the decree have been taking place in the Court of the Subordinate Judge at Hardoi. Finally on the 17th of April, 1925 the decree-holders applied to the Court of the Subordinate Judge at Hardoi that the salary of the judgment-debtor, Kunwar Lal Bahadur, be attached towards the satisfaction of the decree. Kunwar Lal Bahadur is a public servant holding the post of a deputy collector at Gorakhpur. Through the Collector of Gorakhpur the attachment was accordingly made by the Subordinate Judge. The action which the Subordinate Judge took was obviously taken under the provisions of order XXI, rule 48, sub-rule (1), of the Code of Civil Procedure. On the 13th of July, 1925 Kunwar Lal Bahadur submitted an application to the Court of the Subordinate Judge of Hardoi and thereby raised the question that the attachment of the salary was made by the Subordinate Judge without jurisdiction. The learned Subordinate Judge dismissed the application and this appeal is preferred against that order of dismissal, dated the 12th of September, 1925.

It is argued that the power of attachment given by order XXI, rule 48, sub-rule (1), of the First Schedule of the Code of Civil Procedure can only be exercised by the court which passed the decree and not by the court to which the decree was transferred for execution under the provisions of section 39 of the Code of Civil Procedure. In our judgement the contention has no substance whatsoever. When a decree is transferred to a court other than the court

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which passed the decree for execution the court to which it is transferred "shall have the same powers in executing such decree as if it had been passed by itself"—vide section 42 of the Code of Civil Procedure. We are, therefore, of opinion that the attachment made by the Subordinate Judge of Hardoi was made within jurisdiction.

The appeal fails and is dismissed with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Sir Louis Stuart, Knight, Chief Judge.

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KANSHI RAM KHOSLA AND OTHERS (ACCUSED APPLICANTS) v. R. L. DIKSHIT (COMPLAINANT OPPOSITE PARTY.)*

Criminal Procedure Code—Revision against interlocutory orders—Interlocutory orders of a magistrate, appeal against—Appeal against the interlocutory order of a magistrate on the question of jurisdiction.

* *Held*, that there is no provision in the Code of Criminal Procedure for an interlocutory appeal against a magistrate's decision that he has jurisdiction in a case.

Held further, that there is ordinarily no justification for a supreme court or any other court to take up in revision what are really interlocutory matters in a criminal court.

Mr. *H. C. Dutt*, for Reference.

Dr. *J. N. Misra*, opposing the Reference.

STUART, C. J.: I refuse to interfere in this matter. I do not consider that there is ordinarily any justification for a supreme court or any other court to take up in revision what are really interlocutory matters in a criminal court. There is no provision in the Code of Criminal Procedure for an interlocutory appeal against a magistrate's decision that

* Criminal Reference No. 41 of 1925 by Fatch Bahadur Verma, First Additional Sessions Judge of Bara Banki, under section 438 of the Code of Criminal Procedure.