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LALA
NAROTAM
DASS
v.
THAKURAIN
SRI RAM
KUNWAR

Thomas, J.

not appealable, as under section 2(2) of the Code of Civil Procedure, the order does not amount to a decree.

The reply of the learned counsel for the appellant to the preliminary objection raised, is that his appeal falls under section 47 of the Code of Civil Procedure. Thakurain Sri Ram Kunwar was no party to the appellant's decree, therefore the questions arising between Thakurain Sri Ram Kunwar and Narotam Dass could not be taken as question relating to the execution of the decree held by the appellant.

The word "decree" as defined in section 2(2) of the Code of Civil Procedure means, "the formal expression of an adjudication which. . . conclusively determines the rights of the *parties* with regard to all or any of the matters in controversy in the suit.

The order of the learned Assistant Collector clearly shows that he has refused Narotam Dass the execution of his decree on the ground that it has been attached, and as such does not fall under section 47 of the Code of Civil Procedure and is not appealable.

Under these circumstances the preliminary objection must prevail. I accordingly hold that no appeal lay to the Court of the learned District Judge and no appeal lies to this Court also. The appeal is accordingly dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava

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RAMA NAND AND ANOTHER (PLAINTIFFS-APPELLANTS) v. LAL BEHARI (DEFENDANT-RESPONDENT)*

United Provinces Land Revenue Act (III of 1901), section 233 (m)—Jurisdiction of Civil and Revenue Courts—Co-sharer made to pay revenue in excess of his share—Contribution suit

*Second Civil Appeal No. 260 of 1933, against the decree of Pandit Dwarka Prasad Shukla, Additional Subordinate Judge of Gonda, dated the 31st of May, 1933, modifying the decree of Shaikh Mohammad Tufail Ahmad, Munsif of Utraula at Gonda, dated the 18th of December, 1932.

against other co-sharers—Suit, whether cognizable by civil courts.

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Where one co-sharer alleges that he had been made to pay land revenue in excess of what was due from him and brings a suit for contribution against the other co-sharers held, that it is a claim "arising out of the collection of revenue" within the meaning of section 233(m) of the United Provinces Land Revenue Act and therefore is not cognizable by a civil court. *Bindeshri Baksh v. Thakurain Gowar Kunwar* (1), approved. *Collector of Aligarh v. Srimati Ram Devi* (2), distinguished.

Mr. H. N. Misra, for the appellants.

SRIVASTAVA, J.:—This is a plaintiffs' appeal arising out of a suit for contribution. Their case was that they had been made to pay revenue in excess of what was due from them and that this excess payment made by them was on behalf of the defendants who were their co-sharers in the mahal. The claim was decreed by the trial Court. On an appeal by one of the co-sharers, namely, defendant No. 4, the lower appellate court held that the suit was barred by the provisions of section 233(m) of the Land Revenue Act. It accordingly allowed the appeal of defendant No. 4, and dismissed the suit as against him.

The only contention urged on behalf of the appellants is that after the Government revenue had been paid the excess payment made by the plaintiffs was in the nature of a debt for which they were entitled to claim contribution in the Civil Court. Reliance has been placed on the decision of a learned Judge of the Allahabad High Court in *The Collector of Aligarh v. Srimati Ram Devi* (2), in support of this contention. In my opinion this case is not in point. The only question in that case was whether in a suit for contribution arising out of payment of Government revenue the plaintiff is entitled to a joint decree against all the co-sharers or to a decree against each co-sharer for the proportionate amount due from him. It was held that the moment the Government revenue had been paid up the joint and

(1) Select Case No. 82.

(2) (1926) 99 I.C., 1049.

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several liability of the co-sharers came to an end. No question was raised or decided in that case as regards jurisdiction.

Srivastava,
J.

Section 233(m) of the Land Revenue Act provides that no person shall institute any suit or other proceeding in the Civil Court with respect to "claims connected with, or arising out of, the collection of revenue (other than claims under section 183), or any process enforced on account of an arrear of revenue, or on account of any sum which is by this or any other Act realizable as revenue". The words "connected with or arising out of" seem to me to be very wide, and it is difficult to hold that the present claim is not one arising out of the collection of revenue. In a similar case decided in the late Court of the Judicial Commissioner of Oudh, *Babu Bindeshri Baksh v. Thakurain Gowar Kunwar* (1) it was held that in such cases jurisdiction rests with the Revenue Officers only. I am inclined to agree with this view. I am therefore of opinion that the view taken by the lower appellate court is correct and accordingly dismiss the appeal. The respondent, though served, has not appeared and has incurred no costs.

Appeal dismissed.

REVISIONAL CIVIL

*Before Mr. Justice E. M. Nanavutty and
 Mr. Justice Ziaul Hasan*

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 January, 30

HARDEO BAKHSH SINGH (JUDGMENT-DEBTOR-APPLICANT) v.
 BHARATH SINGH (DECREE-HOLDER OPPOSITE-PARTY)*

Civil Procedure Code (Act V of 1908), section 99 and Order XXXII, rules 3 and 7—Minor defendant—Guardian ad litem appointed before the date fixed for the purpose and without minor's consent—Compromise injurious to minor's

*Section 115, Application No. 52 of 1933, against the order of Babu Kamta Nath Gupta, Munsif of Shahabad, District Hardoi, dated the 18th of March, 1933.

(1) Select Case No. 82.