

APPELLATE CIVIL.

*Before Sir Louis Stuart, Knight, Chief Judge, and
Mr. Justice Wazir Hasan.*

1927
December,
19.

ZAKAULLAH KHAN (APPELLANT) v. MUSAMMAT GUL-
KANDI AND OTHERS (RESPONDENTS).*

Oudh Rent Act (XXII of 1886) section 145—"Decree" under section 145, Oudh Rent Act, meaning of—Decree for over Rs. 500 but liability of some defendants under the decree for less than Rs. 500—Execution of decree after lapse of three years, whether allowable.

The word "decree" in the Oudh Rent Act has the same meaning as it has under the Code of Civil Procedure. It is a formal expression of adjudication on the whole and the court has to look at the total amount which the decree involves even where the decree determines liabilities of judgment-debtors *interse* for an amount which is necessarily less than the total amount awarded.

Where a decree is passed in a suit for profits against several defendants for a sum exceeding Rs. 500 and the liability of the defendants was separated, some of the defendants being liable for sums less than Rs. 500 *held*, that execution could take place against the defendants whose liability was for less than Rs. 500 under the decree, even after the lapse of three years, under section 145 of the Oudh Rent Act, as the total amount of the decree under execution was over Rs. 500.

Mr. *Ghulam Hasan*, for the appellant.

STUART, C.J., and HASAN, J. :—The District Judge of Hardoi passed on the 22nd of November, 1917, an appellate decree in a suit for profits brought under the Oudh Rent Act. This decree awarded to the plaintiff Rs. 1,292-2-8 in all, with proportionate costs against three sets of defendants. It awarded Rs. 665-8-6 against Rahatullah Khan and others, Rs. 255-11-0 against Bakaulah and others, and Rs. 370-15-2 against

*Oudh Courts Act Appeal No. 1 of 1927, under section 12(2), against the decree of the Honourable Mr. Justice A. G. P. Pullan, Judge of the Chief Court, dated the 4th of August, 1927.

Muhammad Ibadullah and others. The question which we have to consider is whether execution can take place against Bakaulah and others in respect of their separate liability under this decree after the lapse of three years from the date of the decree. In order to arrive at a decision on this point we have to consider the provisions of section 145 of the Oudh Rent Act. In this section it is laid down that a process of execution shall not be issued on a decree under this Act, when the application for the issue of the process is made after the lapse of three years from the date of the decree, unless the decree is for a sum exceeding five hundred rupees, in which case the period within which execution may be had shall be regulated by the law for the time being in force as to the period allowed for the execution of the decree of civil courts.

It is admitted that the application in execution to which exception is taken has been made within the period allowed for the execution of decrees of civil courts. The question for determination is simply this. Are we to consider the words "for a sum exceeding five hundred rupees" applying to a decree, as denoting the total amount to be realized under the decree, or are we to read the word 'decree' as denoting the amount for which the judgment-debtors are liable individually under the decree, when there are several judgment-debtors, and the decree separates their liabilities? The word "decree" in the Oudh Rent Act has the same meaning as it has under the Code of Civil Procedure. A decree is a formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit. A decree is thus a formal expression of adjudication on the whole, and we have to look at the total amount which the decree involves, even

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when the decree determines the liabilities of judgment-debtors *inter se* for an amount which is necessarily less than the total amount awarded. We consider that the learned Judge of this Court who has arrived at the same view has arrived at a correct view, and we accordingly dismiss this appeal with costs.

Stuart, C. J.
and
Hasan, J.

Appeal dismissed.

MISCELLANEOUS CIVIL.

*Before Sir Louis Stuart, Knight, Chief Judge, and
Mr. Justice Wazir Hasan.*

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DATA DIN AND ANOTHER (PLAINTIFFS-APPELLANT) v. BALDEO AND OTHERS (DEPENDANTS-RESPONDENTS).*

Provincial Small Cause Courts Act (IX of 1887), schedule II, article 41—Contribution suits founded on a decree, whether always governed by article 41—Small Cause Courts, cognizance of suits by—Suit by a sharer in joint property in respect of payments made by him of money due from him jointly with other co-sharers.

Held, that it cannot be laid down broadly as a proposition of law that every claim for contribution founded upon a decree is not a claim of the nature specified in article 41 of the Small Cause Courts Act, 1887. The fact that a decree may furnish the cause of action for a suit of contribution is itself no ground for holding that it cannot be a suit of the nature contemplated by article 41. The right test always is the nature of the suit as brought, and not the circumstances which constitute the cause of action.

Where in execution of a decree for arrears of rent the decree-holder sold certain zamindari shares belonging to the plaintiff and certain other co-sharers and the sale was set aside in respect of the plaintiff's share on payment of a certain sum, *held*, that the suit brought by the plaintiff for the recovery of the sum so paid together with interest against a number of persons, majority of whom were parties to the decree, was a

*Reference for Ruling No. 1 of 1927.