

is the natural son, and as mohunt the representative, of the deceased mohunt, to take out execution of a decree for costs in favour of the deceased, who contested the probate case in which these costs were incurred by the present appellant; and it is contended that under the fourth section of the Certificate Act this order ought not to have been made, inasmuch as neither probate nor certificate nor letters of administration have been granted to the applicant.

The answer is that these costs were not costs due by the debtor to a person as part of the effects of a deceased person; they were in truth costs due to the *muth* as having been incurred in proceedings carried on on behalf of the muth, although in the name of the deceased mohunt. We think that the justice of that contention, and that the truth of it may be properly inferred from all the proceedings, is clear. It is confirmed, if it wants confirmation, by the explicit statement to that effect in the written statement of the judgment-debtor, that the money due under the decree was not due to Pancham personally, but that the money due under the decree belonged to the *Asthan*, and therefore the case does not come within section 4, and the appeal must be dismissed with costs.

Appeal dismissed.

A. A. C.

Before Mr. Justice Pigot and Mr. Justice Banerjee.

GIRINDRO CHUNDER ROY (JUDGMENT-DEBTOR) v. JARAWA
KUMARI AND ANOTHER (DECREE-HOLDERS).*

1891
July 20.

Execution of decree—Decree of Her Majesty in Council—Transfer of decree for execution—Territorial jurisdiction—Civil Procedure Code (Act XIV of 1882), ss. 610, 649, 223.

The effect of sections 610 and 649 of the Civil Procedure Code is that the Court which formerly had, but now no longer has, territorial jurisdiction ought, when the decree is sent to it, to exercise by its own motion, or when applied for, the provisions of section 223 of the Civil Procedure Code, and transfer the decree for execution to the Court which has territorial jurisdiction.

* Appeal from Order No. 133 of 1891, against the order of Babu Kedar Nath Mozoomdar, 2nd Subordinate Judge of Hooghly, dated the 18th April 1891.

1891

GIRINDRO
CHUNDER
ROY

v.
JARAWA
KUMARI.

IN this case the decree-holder applied to the 2nd Subordinate Judge of Hooghly for execution of a decree of Her Majesty in Council.

The judgment-debtor took the objection that the Court of the 2nd Subordinate Judge of Hooghly had no jurisdiction to execute the decree, inasmuch as the land covered by the decree was then situate within the local limits of the jurisdiction of the 3rd Subordinate Judge of Hooghly.

It appeared that the decree in question was originally passed by the Court of the 2nd Subordinate Judge of Hooghly, which was eventually confirmed by Her Majesty in Council, and that the High Court transmitted the same to the Court of the 2nd Subordinate Judge for execution.

The 2nd Subordinate Judge held that the objection of the judgment-debtor was untenable and that his Court was competent to execute the decree.

From this order the judgment-debtor appealed to the High Court.

Baboo *Mohini Mohun Roy* and Baboo *Lal Behary Mitter* for the appellant.

Dr. *Rash Behary Ghose* and Baboo *Dwarkanath Chuckerbutty* for the respondents.

The judgment of the Court (PIGOT and BANERJEE, JJ.) was as follows:—

We think that in this case the effect of sections 610 and 649 of the Civil Procedure Code is that the Court which formerly had, but now no longer has, territorial jurisdiction ought, when the decree is sent to it, to exercise by its own motion, or when applied for, the provisions of section 223, and transfer the decree for execution to the Court which now has territorial jurisdiction. Whether or not under the law, as it now stands, the decree under section 610 ought, under such a decree as that of the Judicial Committee in this case, to be sent direct from this Court to the Court now having territorial jurisdiction is a matter which we need not discuss in this case.

The appeal is allowed, but without costs.

A. F. M. A. R.

Appeal allowed.