

Commissioner, as Manager of the Court of Wards of the Mahcwa Estate, is settled by statute law contained in the U. P. Court of Wards Act, and does not, in our opinion, involve a substantial question of law such as would justify us in granting leave to the applicants to appeal to His Majesty in Council. No doubt, the question involved is of importance to the applicants, but in our opinion there is really no substance in the appeal which the applicants propose to file to His Majesty in Council. And further, the applicants being disqualified proprietors, they really have got no right to file the present application for permission to appeal to His Majesty in Council.

For the reasons given above we dismiss this application with costs and refuse to grant permission to the applicants to appeal to His Majesty in Council.

Appeal dismissed.

REVISIONAL CIVIL

*Before Sir C. M. King, Knight, Chief Judge and
Mr. Justice E. M. Nanavutty*

HAR NARAIN SETHI (DECREE-HOLDER-APPLICANT) *v.* MESSRS.
BIRD & CO. AND OTHERS (OPPOSITE-PARTY)*

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Civil Procedure Code (Act V of 1908), sections 39 and 73 and Order XXI, rule 52—Decree transferred for execution—Executing Court ordering rateable distribution of judgment-debtor's assets attached in another decree—Decree-holder's remedy lies in separate suit, not in revision petition—Civil Procedure Code (Act V of 1908), section 115, essentials of revision under—Revision application, whether maintainable—“Subordinate Court”, meaning of.

Where a Court passing a decree transfers it for execution to a Court in the jurisdiction of another High Court, and the executing Court orders rateable distribution of assets of a judgment-debtor, attached on the application of a second

*Section 115 Application No. 95 of 1934, against the order of Pandit Krishna Nand Pandey, Additional Subordinate Judge of Unao, dated the 30th of April, 1934.

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decree-holder, the latter's application for revision of the order directing rateable distribution is virtually directed against the order transferring the decree, and it is open to the applicant to file a regular suit against his rival decree-holder for refund of assets under section 73(2) and the revision application under section 115 is not cognizable by the High Court, to which the Court transferring the decree is not subordinate.

Where a remedy is open to an applicant for revision by the filing of a suit under section 73(2), C. P. C., an application for revision is not maintainable.

The right to file a revision under section 115, C. P. C., depends upon the fulfilment of the condition that no other remedy by suit, application or appeal is available to the applicant, the recognized rule of procedure being that the special and extraordinary remedy by invoking the revisional powers of High Court should not be exercised unless as a last resource for an aggrieved party. *Sher Ali v. Jagmohan Ram* (1), relied on.

For the purposes of section 115, C. P. C., a Court subordinate to a High Court is one over which the High Court has appellate jurisdiction.

Mr. *Radha Krishna*, for the applicant.

Messrs. *H. K. Ghosh* and *L. S. Misra*, for the opposite-party.

KING, C.J. and NANAVUTTY, J.:—These are three connected applications for revision under section 115 of the Code of Civil Procedure filed by the decree-holder Har Narain Sethi against an order of the learned Additional Subordinate Judge of Unao allowing rateable distribution to the opposite-parties, Messrs. Bird & Co., the Punjab National Bank, Ltd., Cawnpore, and Bishu Nath Bisheshar Nath.

The facts out of which these applications for revision arise are briefly as follows:

Messrs. Bird & Co. (the opposite-party in Application No. 95 of 1934), had a decree for Rs.25,000 odd against Jai Ram Das from the Court of the Subordinate Judge of Cawnpore. On the 20th of August, 1925, they realised a sum of Rs.5,866 odd from Jai Narain Das leaving a balance due to them of Rs.19,000 odd. On the 31st of

(1) (1930) I.L.R., 53 All., 466.

March, 1933, the present applicant Har Narain Sethi got a decree against Jai Ram Das from the Court of the Additional Subordinate Judge of Unao for a sum of Rs.2,715 odd. Jai Ram Das appealed against this decree but his appeal was dismissed. On the 13th of January, 1934, Har Narain Sethi applied for attachment and sale of the movable property of the judgment-debtor Jai Ram Das. The property was attached and one Mr. Saraf, an Advocate, was appointed *supurdar*, the 22nd of March, 1934, being fixed as the date for sale. In the meantime Messrs. Bird & Co. applied for transfer of their decree from Cawnpore to Unao, and on the 28th of February, 1934, the decree of Messrs. Bird & Co. against Jai Ram Das was transferred for execution to the Court of the Additional Subordinate Judge of Unao. Thereupon Messrs. Bird & Co. applied to the executing Court at Unao under order XXI, rule 52 of the Code of Civil Procedure for attachment and for rateable distribution under section 73 of the Code of Civil Procedure. Har Narain Sethi objected in the Court of the Additional Subordinate Judge at Unao that the Cawnpore Court had no jurisdiction to transfer the decree of Messrs. Bird & Co. against Jai Ram Das to Unao for execution. This objection was over-ruled and, by his order dated the 30th of April, 1934, the Additional Subordinate Judge of Unao allowed rateable distribution of the assets of Jai Ram Das in his possession to Messrs. Bird & Co. Similar applications for rateable distribution in the assets of Jai Ram Das by the Punjab National Bank at Cawnpore and Bishu Nath Bisheshar Nath were also allowed by the Additional Subordinate Judge by his orders, dated the 2nd of June, 1934 and 6th August, 1934, respectively. It is against these three orders that Har Narain Sethi has filed these revisional applications.

A preliminary objection has been raised on behalf of the opposite-parties that this Court cannot revise the order of the Court of the Subordinate Judge of

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Cawnpore transferring the decree of Messrs. Bird & Co. for execution to the Court of the Additional Subordinate Judge of Unao.

We have heard the learned counsel of both parties at some length, and we are clearly of opinion that this Court has no power in revision to set aside, in effect, the order of the Subordinate Judge of Cawnpore transferring the decree to the Additional Subordinate Judge of Unao for execution, because the Court of the Subordinate Judge of Cawnpore is not subordinate to this Court. For the purposes of section 115 of the Code of Civil Procedure, a Court subordinate to a High Court is one over which the High Court has appellate jurisdiction.

The learned counsel for the applicant Har Narain Sethi contends that he is not asking this Court to set aside the order of the Subordinate Judge of Cawnpore transferring the decree for execution to Unao, but that he is asking this Court to set aside the order of the learned Additional Subordinate Judge of Unao allowing rateable distribution. That order, however, would not have been passed but for the fact that the Subordinate Judge of Cawnpore transferred the decree of Messrs. Bird & Co. to Unao for execution, and therefore the application for revision is virtually directed against the order of the Subordinate Judge of Cawnpore transferring the decree from his Court to the Court of the Additional Subordinate Judge of Unao for execution.

We therefore uphold the preliminary objection raised on behalf of Messrs. Bird & Co. and dismiss with costs. Application No. 95 of 1934.

As regards the applications (Nos. 96 and 146) in respect of the order allowing rateable distribution to the Punjab National Bank, Ltd., Cawnpore, and Bishu Nath Bisheshar Nath, we note that sub-section (2) to section 73 of the Code of Civil Procedure lays down that where all, or any, of the assets liable to be rateably distributed under this section are paid to any person not entitled to receive the same, any person so entitled may

sue such person to compel him to refund the assets. It is therefore open to the applicant Har Narain Sethi to file a regular suit to compel his rival decree-holders to refund the assets of Jai Ram Das which they have wrongfully realised under the orders of the Additional Subordinate Judge of Unao. This remedy being open to the applicant it is clear that we should not exercise the revisional jurisdiction vested in this Court under section 115 of the Code of Civil Procedure in favour of the applicant. In *Sher Ali v. Jagmohan Ram* (1), the learned CHIEF JUSTICE of the Allahabad High Court made the following observation:

“The right to file a civil revision under section 115 is dependent upon the fulfilment of the condition that no other remedy by suit, by application or by appeal is available to the applicant. It is a recognized rule of procedure that the special and extraordinary remedy by invoking the revisional powers of this Court should not be exercised unless as a last resource for an aggrieved litigant: *Sundar Das v. Mansa Ram* I. L. R., 7 All., 407, *Shiva Nathji v. Joma Kashinath* I. L. R., 7 Bom., 341, *Sheo Prasad Singh v. Kastura Kuar* I. L. R., 10 All., 119, *Gopal Das v. Alaf Khan* I. L. R., 11 All., 383 and *J. J. Guise v. Jaisraj* I. L. R., 15 All., 405.”

Since a remedy is open to the applicant Har Narain Sethi by the filing of a suit under sub-section 2 of section 73 of the Code of Civil Procedure, we are not disposed to exercise our powers of revision in his favour.

For the reasons given above, we dismiss these applications with costs.

Application dismissed.

(1) (1930) I.L.R., 53 All., 466(471).

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