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suit therefore no longer stands in their way although it has not been actually reversed.

We are clearly of opinion that the order under appeal is one against which no appeal lies. This appeal accordingly fails and is dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL

Before Mr. Justice G. H. Thomas, Chief Judge and Mr. Justice R. L. Yorke

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PANDIT JAI DAYAL (OBJECTOR APPELLANT) *v.* PANDIT JAGDEO NARAIN AND OTHERS (OPPOSITE-PARTY RESPONDENTS)*

U. P. Temporary Postponement of Execution of Decree Act (X of 1937), sections 3 and 6—Money decree passed on compromise in a suit for damages for torts—Execution of decree —Judgment debtor, if can claim protection of the Act.

Where a money decree is passed in a suit founded on a plaint in which damages for tort were claimed, the decree is certainly to be construed as a decree for damages for tort, and the case comes within the mischief of section 6 of Act X of 1937, and the judgment-debtor cannot claim the protection of the Act.

Messrs. *Ram Bharose Lal* and *Murli Manohar Lal*, for the appellant.

Messrs. *Rajeshwari Prasad* and *Raj Bahadur Srivastava*, for the respondent no. 1.

THOMAS, C. J. and YORKE, J.:—This is an execution of decree appeal by one Pandit Jai Dayal Judgment-debtor objector. It arose originally out of a murder case. One Jai Deo, who had a full brother Jai Kishen and a step brother Jai Dayal, was murdered. Jai Dayal filed a first information report implicating Jai Kishen, Jado Nandan and others as responsible for the murder. Jai Kishen among others was prosecuted on a charge of murder. Jai Kishen was

*Execution of Decree Appeal No. 23 of 1938, against the order of Mr. Girja Shankar Misra, Additional Civil Judge of Unao, dated the 27th April, 1938.

acquitted and instituted a suit for damages for malicious prosecution. In the course of that suit there was a compromise decree under which the judgment-debtor appellant Jai Dayal was to make certain payments for the building of a school. This decree was passed as far back as 1929. Certain former applications for execution appear to have been infructuous; but on the present application for execution an application was made for appointment of a receiver which is the subject of a connected appeal no. 24 of 1938. In the present case the judgment-debtor filed objections under section 47, C. P. C., read with section 3 of the Temporary Postponement of Execution of Decrees Act (U. P. Act no. X of 1937).

The only point which arises in this appeal is whether the execution of the decree is to be postponed under the provisions of that Act. Learned counsel for the appellant contends that this is a mere money decree passed on a compromise. For the respondents it is contended, as it was contended in the lower court, that the decree in suit comes within the mischief of section 6 of the Act. That section provides: "Nothing herein contained shall (*a*) . . . or (*b*) apply to decrees for money arising out of claims relating to trusts or for maintenance or for profits in favour of a co-tenant or co-owner, or for mesne profits, or for damages for tort, or for contribution between co-tenant of agricultural land". Learned counsel argues that this section is to be read, so far as this case is concerned, as meaning that nothing in the Act shall apply to "decrees for damages for tort", and he contends that this was not a decree for damages for tort. It is, however, clear that it is a money decree passed in a suit founded on a plaint in which damages for tort were claimed, and we are of opinion that in these circumstances the decree in question is certainly to be construed as a decree for damages for tort. In any case we would not have been prepared to accede to

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this contention because we do not read the section as learned counsel has sought to read it. We are of opinion that the section is to be read not as suggested but as laying down that "nothing herein contained shall apply to decrees for money arising out of claims for damages for tort." Reading the section in this way, it is quite clear that the present case comes within the mischief of section 6 of the Act and the judgment-debtor cannot claim the protection of the Act.

Learned counsel for the respondents has further pointed out that there is a second reason why the judgment-debtor cannot claim the protection of the Act. Section 3 gives protection to an agriculturist judgment-debtor only if such judgment-debtor does not pay more than Rs.250 as land revenue or rent. The appellant himself filed *khewats* from which it appeared that the land revenue payable by him and his two sons is Rs.755. Even if this were divided into three shares, the share of each would be more than Rs.250, but in fact one of the appellant's two sons has been adopted into another family and has no longer any share. It follows that this amount of land revenue is to be divided by two and not by three, and therefore the amount of land revenue, which the appellant pays, is nearly Rs.400, and he is therefore debarred from claiming the protection of the Act.

In these circumstances we are quite clear that the objection of the appellant was rightly rejected by the lower court. There is no force in this appeal which therefore fails and is dismissed with costs.

Appeal dismissed.