

unmistakable that the plaintiff has never been in possession of the land claimed for nearly 22 years and where on the other hand possession is exercised adversely to him as found in the present case, I see no reason for interference.

The appeal is dismissed with costs.

ADAMI, J. I agree.

*Appeal dismissed.*

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## APPELLATE CIVIL.

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*Before Das and Foster, J.J.*

BIBI UMA HABIBA

v.

MUSSAMMAT RASOOLAN.\*

*Code of Civil Procedure, 1908 (Act V of 1908), section 73—Court, jurisdiction of, to enquire into bona fides of decree.*

An executing court making a rateable distribution under section 73 of the Code of Civil Procedure, 1908, has no power to make enquiries into the bona fides of the decrees of the rival claimants.

*Shankar Sarup v. Mejo Mal* (1), relied on.

Appeal by the decree-holder.

The appellant held a money decree for her dower, her deceased husband being one Manzoorul Haq. In the course of the execution, after realization of certain assets, the respondent Bibi Rasoolan put in a claim for rateable distribution under section 73 of the Code of Civil Procedure. Thereupon the decree-holder, Bibi Uma Habiba, made objection to this intrusion in the course of her execution on the ground that the

1925.

MUSSAMMAT  
PATINA  
KUER

v.

RAJA RAM  
PANDEY.

SEN, J.

1926.

Jan., 27.

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\* Appeal from Original Order no. 113 of 1925, with Civil Revision no. 182 of 1925, from an order of B. Shivanandan Prasad, Subordinate Judge of Darbhanga, dated the 17th April, 1925.

(1) (1901) I. L. R. 23 All. 313, P. C.

1926.

BIBI UMA  
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RASOOLAN.

decree of Bibi Rasoolan was obtained in collusion with the judgment-debtors. She therefore asked the Court to hold an enquiry into the matter with a view to a decision whether Bibi Rasoolan was in possession of a bona fide decree, and whether she should not be excluded from the rateable distribution. The Subordinate Judge quoted a number of cases ending in *Shankar Sarup v. Mejo Mal* (1). In this last case their Lordships of the Judicial Committee remarked: "The 295th section" (that is the section which corresponds to the present section 73) "while providing that the Judge under whose authority the sale takes place shall distribute the proceeds, provides also that if all or any of such assets be paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets \* \* \* \* \* The scheme of section 295 is rather to enable the Judge as matter of administration to distribute the price according to what seems at the time to be the rights of parties without this distribution importing a conclusive adjudication on those rights, which may be subsequently readjusted by a suit such as the present".

The Subordinate Judge, relying on this and other cases found that the objection could not be made the occasion of a judicial enquiry whether there was a right to rateable distribution by virtue of the decree exhibited.

*Khurshaid Husnain, Syed Ali Khan and S. M. Wasi*, for the appellants.

*S. M. Mullick and Rajeswar Prasad*, for the respondents.

FOSTER, J. (after stating the facts set out above, proceeded as follows): It seems to me that the learned Subordinate Judge took a correct attitude in this matter. Section 73 itself specifically states that when there are assets in the court, they may be

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(1) (1901) I. L. R. 23 All. 313, 322, P. C.

rateably distributed between the claimants money-decree-holders; and where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets. It appears to me therefore that the remedy indicated in the second clause of section 73 is the only remedy. "The expression of one thing is the exclusion of the other."

It was urged that the matter really was under section 47, but it seems to me that the Privy Council decision must be deferred to, and this matter must be regarded as a purely ministerial act which has no element of a judicial decision.

I would therefore dismiss this appeal without costs and the Civil Revision is also dismissed.

DAS, J.—I agree.

*Appeal dismissed.*

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## REVISIONAL CRIMINAL.

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*Before Ross and Kulwant Sahay, J.J.*

BENGALI GOPE

*v.*

KING-EMPEROR.\*

1926.

Jan., 27.

*Code of Criminal Procedure, 1898 (Act V of 1898), sections 37, 190 and 529—Authorization of magistrate with second class powers to entertain complaints, effect of—Complaint of murder, whether magistrate may entertain—prosecution for false complaint of which cognizance is taken without authority—section 529(e), effect of.*

Section 190(2), Code of Criminal Procedure, provides :  
 ".....the District Magistrate.....may empower any magistrate to take cognizance under sub-section (1),

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\* Criminal Revision no. 480 of 1925, from an order of P. Mazumdar, Esq., Magistrate, First Class, Patna, dated the 11th of May, 1925.