

1928.

UMAKANTA
DAS
BAJEI
GANJAN
BHUKAN
MAHAPATRA
v.
BISWAMBHAR
DAS
MAHAPATRA.

KULWANT
SAHAY, J.

allowed by the District Judge was Rs. 1,236. This however, was in accordance with the General Rules and Circular Orders of the High Court. Having regard, however, to the fact that the will propounded was the genuine will of the testator and the application for letters of administration fails merely because the will was not properly attested, the costs in this Court as well as in the Court below should come out of the estate dealt with in the will. With this slight modification this appeal is dismissed.

MACPHERSON, J.—I agree. Indeed I go somewhat further and hold that the pleader was purely a witness to the deposit of the will, was not asked by the testator to attest his will and had no animus attestandi.

APPELLATE CRIMINAL.

Before Kulwant Sahay and Macpherson, JJ.

RAMCHANDRA PADHI

1928.

Dec., 4.

v.

KING-EMPEROR.*

Code of Criminal Procedure, 1898 (Act V of 1898), sections 195(3) and 476B—Munsif, whether subordinate to Subordinate Judge of Sambalpur within the meaning of the sections—Bengal, Agra and Assam Civil Courts Act, 1887 (Act XII of 1887), section 21, clauses (2) and (4)—notification—appeal, whether lies from an order of appellate court making complaint after subordinate court refuses to do so.

Section 21 of the Bengal, Agra and Assam Civil Courts Act, 1887, provides :

“(2).....an appeal from a decree or order of a Munsif shall lie to the District Judge; (4) The High Court may, with the previous sanction of the Local Government, direct, by

**Circuit Court, Cuttack. Criminal Appeal no. 2 of 1928, from a decision of Babu Sadhu Charan Mahanty, officiating Subordinate Judge, Sambalpur, dated the 7th July, 1928.*

notification in the official Gazette, that appeals lying to the District Judge under sub-section (2) from all or any of the decrees or orders of any Munsif shall be preferred to the Court of such Subordinate Judge as may be mentioned in the notification and the appeal shall thereupon be preferred accordingly." 1928.
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By a notification in the official gazette of the 4th March, 1907, the High Court, with the previous sanction of the Local Government, directed that appeals lying to the District Judge of Manbhum-Sambalpur from the district of Sambalpur should be preferred to the court of the Subordinate Judge of Sambalpur.

Held, that as, under the notification, all appeals from the decree or order of the Munsif lie to the court of Subordinate Judge of Sambalpur, the latter court is "the court to which appeals ordinarily lie" within the meaning of section 195(3), Code of Criminal Procedure, 1898, and, therefore, that it is the superior court which is empowered under section 476B of the Code to make a complaint which the subordinate court of the Munsif might have made.

Sudarsan Behra v. The King-Emperor(1) followed.

Query: Whether an appeal lies under section 476B from an order of the appellate court making a complaint after a subordinate court has refused to do so?

Moideen Rowthen v. Miyassa Pulavar(2) and *Ranjit Narayan v. Ram Bahadur*(3), referred to.

The facts of the case material to this report are stated in the judgment of Macpherson, J.

D. P. Das Gupta, for the appellant.

B. N. Das, for the respondent.

MACPHERSON, J.—This is an appeal by Ramchandra Padhi under section 476B of the Code of Criminal Procedure in respect of the complaint of an offence under section 199 of the Indian Penal Code made by the Subordinate Judge of Sambalpur against the appellant in respect of an affidavit of appellant on the 27th February, 1928, in which he swore that

(1) (1927) 8 Pat. L. T. 104. (2) (1928) I. L. R. 51 Mad. 777.

(3) (1920) I. L. R. 5 Pat. 202.

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service of summons on Labanidhar Hota had been made at Sankhala in the manner stated in the report of the process-server Radhakanta Gartia. The process-server had reported that he had tendered the summons to Labanidhar Hota personally at Sankhala but he had refused to accept it, and the summons had accordingly been affixed to the door of his house. Labanidhar's case is that he was not at Sankhala at that period, does not yet live there and was never offered the summons there or elsewhere, and he accordingly applied to the Munsif for the prosecution of the peon and the appellant in respect of the report and affidavit respectively.

The Munsif dismissed the application but on appeal the learned Subordinate Judge found that the process had not been tendered to Labanidhar Hota at all either at Sankhala or elsewhere but that the peon when giving delivery of possession on another process at Salesingha, a village two miles from Sankhala, had also taken the signature of the witnesses to the delivery of possession on the summons addressed to Labanidhar and had subsequently written up at Sambalpur his report of service of the summons antedating it and falsely stating therein that he had tendered the process to Labanidhar Hota at Sankhala. The appellant knowing that to be false, filed an affidavit in support of it. The learned Subordinate Judge presented a petition of complaint under section 199 against both the peon and the appellant. The peon was not appealed.

It has been decided in *Ranjit Narayan Singh v. Ram Bahadur*⁽¹⁾ that an appeal lies under section 476B from an order of the appellate Court making a complaint after a subordinate Court has refused to do so. That view is not accepted by, among others, the High Courts of Calcutta, Lahore and Madras [in a recent case⁽²⁾ the Madras High Court has considered and dissented from the decision cited] and

⁽¹⁾ (1928) I. L. R. 5 Pat. 282

⁽²⁾ (1928) I. L. R. 31 Mad. 775

in our opinion it may on a proper case arising require re-examination by the Patna High Court. So far as the present case is concerned, it will be found that it does not matter whether an appeal lies or only an application in revision since the only point pressed before us is that the learned Subordinate Judge had no jurisdiction to make a complaint.

In support of that argument the learned Advocate contends that the learned Subordinate Judge is not the Court to whom the Munsif is subordinate within the meaning of section 195(3) of the Code of Criminal Procedure inasmuch as appeals do not ordinarily lie to him from the appealable decrees of the Court of the Munsif and accordingly he is not the superior Court within the meaning of section 476B. The point was dealt with in the case of *Sudarsan Behra v. The King Emperor*⁽¹⁾ in which it was pointed out in a precisely similar case that the learned Subordinate Judge of Sambalpur had rightly held that under the provisions of section 195 read with section 21(2) and (4) of the Bengal, Agra and Assam Civil Courts Act (XII of 1887) the appeal lay to him. Under section 21(2) of Act XII of 1887 an appeal from a decree or order of a Munsif shall lie to the District Judge but under sub-section (4) the High Court may, with the previous sanction of the Local Government, direct by notification in the official gazette, that appeals lying to the District Judge under sub-section (2) from all or any of the decrees or orders of any Munsif shall be preferred to the Court of such Subordinate Judge as may be mentioned in the notification and the appeal shall thereupon be preferred accordingly. By a notification of the 4th March, 1907, published in Part I, page 418 of the *Calcutta Gazette* of 1907, the High Court with the previous sanction of the Local Government directed that appeals lying to the District Judge of Manbhum, Sambalpur from the district of Sambalpur should be preferred to the Court of the Subordinate Judge of

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Sambalpur. As under that notification all appeals lie to that Court, it is clearly the Court to which appeals ordinarily lie within the meaning of section 195(3), particularly in view of the proviso, and, therefore, the superior Court which is empowered under section 476B to make the complaint which the subordinate Court of the Munsif might have made.

The contention being unfounded and no other point being urged the appeal fails and is dismissed. We make no order as to costs.

KULWANT SAHAY, J.—I agree.

Appeal dismissed.

S. A. K.

APPELLATE CIVIL.

Before Das and James, JJ.

MUSSAMMAT LAKHPAT KUER

v.

DURGA PRASAD.*

Limitation Act, 1908 (Act IX of 1908), Schedule 1, Article 116—refund of purchase-money, suit for—limitation, terminus a quo—covenant of title—knowledge of the infirmity of vendor's title, whether material—Transfer of Property Act, 1882 (Act IV of 1882), section 55(2).

Every conveyance imports a covenant of title under section 55(2), Transfer of Property Act, 1882, and this is so irrespective of the question whether the buyer has or has not notice of the infirmity of the title of the seller.

A suit for refund of the purchase-money paid under a registered instrument, on the ground that consideration for

*Appeal from Appellate Decree no. 372 of 1927, from a decision of H. L. L. Allanson, Esq., I.C.S., District Judge of Gaya, dated the 24th November, 1926, confirming a decision of Babu Akhury Nityanand Singh, Subordinate Judge of Gaya, dated the 23rd April, 1926.