

LETTERS PATENT APPEAL.

Before Shadi Lal C. J. and Broadway J.

MUL RAJ (DECREE-HOLDER) Appellant

versus

BURA MAL (JUDGMENT-DEBTOR) Respondent.

Letters Patent Appeal No. 37 of 1930.

Civil Procedure Code, Act V of 1908, section 151—Inherent powers of Court to give effect to its lawful orders—Order under the section—whether appealable.

The Senior Subordinate Judge, in execution of a mortgage-decree, ordered the sale of a plot of land, free from any encumbrance. The officer conducting the sale sold it, however, subject to a mortgage in favour of the decree-holder. The Senior Sub-Judge thereupon set aside the sale as having been made against his direction. On appeal a Single Judge of the High Court reversed that order on the ground that the Senior Sub-Judge had no jurisdiction to set aside the sale *suo motu*. In an appeal under the Letters Patent:

Held, that when the Court is empowered to make an order, it has inherent jurisdiction to see that the order is carried into effect.

The sale admittedly contravened the express direction of the Court, and section 151 of the Civil Procedure Code confers ample power upon the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

Held also, that as an order under section 151, Civil Procedure Code, is not subject to an appeal, the Single Judge of the High Court had no jurisdiction to entertain the appeal, and his judgment being *coram non iudice* must be set aside.

Sukhdeo Dass v. Rito Singh (1), and *Hari Singh v. Bulaqi Mal and Sons* (2), relied upon.

Appeal under clause 10 of the Letters Patent from the judgment of Hilton J, dated the 25th April 1930.

(1) (1917) 2 Pat. L. J. 361. (2) (1930) I. L. R. 11 Lah. 93.

N. C. PANDIT, for Appellant.

Nemo, for Respondent.

SHADI LAL C. J.—The circumstances, which have given rise to this appeal under the Letters Patent, lie within a narrow compass. The Senior Subordinate Judge of Gujranwala ordered the sale of a plot of land in execution of a mortgage decree and directed that the property be sold, free from any encumbrance. The officer who conducted the sale, however, sold it subject to a mortgage in favour of the decree-holder. Thereupon, the Subordinate Judge set aside the sale, as it was not made in accordance with his direction. This order has been reversed by Hilton J. on the ground that the Subordinate Judge had no inherent jurisdiction to set aside the sale *suo motu*.

There can be little doubt that when the Court is empowered to make an order, it has inherent jurisdiction to see that that order is carried into effect. The sale admittedly contravened the express direction of the Court, and section 151 of the Civil Procedure Code confers ample power upon the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

It is, however, unnecessary to dilate upon the subject, because no appeal lay from the order of the Court of first instance. It has been repeatedly laid down that an order made under section 151, Civil Procedure Code, is not subject to an appeal; *vide, inter alia*, *Sukhdeo Dass v. Rito Singh* (1) and *Hari Singh v. Bulaqi Mal and Sons* (2). It appears that this objection was not raised before the learned Judge of this Court, but as he had no jurisdiction to entertain the appeal, his judgment is *coram non iudice* and must be set aside.

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I would accordingly accept the appeal and, setting aside the judgment of the Single Judge, restore that of the Court of first instance. I would leave the parties to bear their own costs throughout.

BROADWAY J.

BROADWAY J.—I agree.

A. N. C.

Appeal accepted.

REVISIONAL CRIMINAL.

Before Bhide and Tapp JJ.

KUNDAN LAL AND OTHERS—Petitioners

versus

THE CROWN—Respondent.

Criminal Revisional No. 271 of 1931.

Criminal Procedure Code, Act V of 1898, section 337 (3)—Approver—custody of—during trial of case—Judicial custody—whether Court has power to alter its nature—Section 541 (1)—Order by Local Government directing approvers to be confined in a place in occupation of police—whether legal—Prisons Act, IX of 1894, section 3—“Judicial custody”—“Prison”—and “Criminal prisoner”—meaning of.

The petitioners, being under trial by Commissioners appointed under Punjab Act IV of 1930 on charges of conspiracy and murder, applied to the Commissioners to have the approvers removed from the custody of the police to the judicial lock-up, but the Commissioners ordered them to be detained in the Lahore Fort in the custody of the Superintendent of Police C.I.D., on the ground of balance of convenience. The petitioners preferred a petition for revision against that order.

Held, that during an enquiry or trial the custody in which an accused person concerned in such enquiry or trial is to be detained is “judicial” custody or, in other words, confinement in a prison, which, according to section 3 of the Prisons Act, means any jail or place used permanently or