

REVISIONAL CIVIL.

Before Abdul Qadir J.

1932

TOTA RAM (JUDGMENT-DEBTOR) Petitioner

April 5.

versus

SHIBBAN LAL (DECREE-HOLDER) } Respondents.
 ABDUL QAYYUM (TRANSFEREE) }

Civil Revision No. 590 of 1931.

Specific Relief Act, I of 1877, section 9: Appeal—from an order in execution proceedings of a decree passed under that section—whether competent.

Held, that an application to execute a decree for possession of land passed under section 9 of the Specific Relief Act, is included in the term 'Suit' as used in that section and no appeal is competent, therefore, from an order passed on such application.

Kanai Lal Ghose v. Jatindra Nath Chandra (1), followed in *Munshi Ram v. Amin Chaud* (2), relied upon.

Petition for revision of the order of Lala Chuni Lal, District Judge, Karnal, dated the 10th June, 1931, reversing that of Lala Maharaj Kishore, Subordinate Judge, 3rd class, Panipat, dated the 3rd February, 1931, and remanding the case to the lower Court, with the direction to proceed with the execution in accordance with law.

HEM RAJ MAHAJAN, for Petitioner.

Nemo, for Respondents.

ABDUL QADIR J.

ABDUL QADIR J.—Shibban Lal got a decree against Tota Ram under section 9 of the Specific Relief Act on the 21st of May, 1930. for possession of a vacant piece of land. He transferred his rights under the

(1) (1918) I. L. R. 45 Cal. 519. (2) 1928 A. I. R. (Lah.) 539.

decree to one Abdul Qayyum on the 2nd of July, 1930, for consideration received. The latter sought to execute this decree on the 5th of July, 1930, but Tota Ram objected to the execution of the decree on two grounds:—(1) that he had entered into a compromise with Shibban Lal, and (2) that the decree in favour of Shibban Lal was a personal decree in a summary proceeding under the Specific Relief Act which could not be transferred to another person. The executing Court decided against the objector on the first point, but in his favour on the second point, and dismissed the application for execution. Abdul Qayyum appealed to the District Judge, who reversed the order of the trial Court.

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Against this last order & petition for revision has been submitted to this Court by Tota Ram, through Mr. Hem Raj Mahajan. The respondent has been served with notice of this petition, but has not appeared before me.

The main ground urged by Mr. Hem Raj Mahajan is that no appeal was competent in this case, against the order of the executing Court, and that, therefore, the order of the learned District Judge in appeal is made without jurisdiction. In support of this contention reliance is placed on section 9 of the Specific Relief Act and on *Kanai Lal Ghose v. Jatindra Nath Chandra* (1). Section 9 says that no appeal shall lie from any order or decree passed in any suit instituted under this section (section 9), nor shall any review of any such order or decree be allowed. It was held in *Kanai Lal Ghose v. Jatindra Nath Chandra* (1) that an application in execution proceedings was included in the term "suit" in section 9 of the Specific Relief Act,

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and an appeal to the District Judge from an order of the executing Court was incompetent. This authority has been followed in a decision of this Court in *Munshi Ram v. Amin Chand* (1).

I think the contention of Mr. Hem Raj Mahajan must prevail. The District Judge had no jurisdiction to entertain the appeal, and, therefore, the orders passed by him are set aside and the order of the executing Court is restored. The revision is accepted with costs.

N. F. E.

Revision accepted.

APPELLATE CIVIL.
*Before Tek Chand and Monroe JJ.***HARNARAIN-SAHIB RAM, ETC. (DEFENDANTS)**

Appellants

*versus***BIHARI LAL-CHARANJI LAL (PLAINTIFF)**

Respondent.

Civil Appeal No. 1907 of 1926.

Indian Stamp Act, II of 1899, sections 36, 75 : Government of India Rule 7—Document admitted by Trial Court—whether objection under the Stamp Act can be raised on appeal—Negotiable Instruments Act, XXVI of 1881, Sections 1, 80 : Instrument in oriental language—Interest on dishonoured hundi—whether can be allowed at customary rate exceeding the statutory rate—Mercantile usage—proof of.

The plaintiff sued for principal Rs. 2,429-14-0, Rs. 637-8-0 as charges in connection with the presentation of 17 *hundis* and the balance Rs. 4,432-10-0 on account of interest and compound interest at the rate of 10 annas *per cent. per annum* as from dishonour, pleading that this rate was payable according to mercantile usage at Bombay. The *hundis* in suit were made up of two forms each with an impressed