

## LETTERS PATENT APPEAL.

Before Shadi Lal C. J. and Broadway J.

KANHAYA LAL AND OTHERS (JUDGMENT-DEBTORS)  
Appellants

versus

THE PUNJAB NATIONAL BANK, LIMITED,  
LAHORE (DECREE-HOLDER) Respondent.

Letters Patent Appeal No. 169 of 1927.

*Civil Procedure Code, Act V of 1908, Order XXI, rule 11: Execution application not expressly describing the mode in which assistance of Court is required—whether an application in accordance with law—within meaning of article 182, clause (5) of the Indian Limitation Act, IX of 1908—Executing Court—whether bound by decree as it stands.*

One *N. C.* had obtained from the Senior Subordinate Judge a decree against the judgment-debtors for the recovery of a certain sum of money, and in execution of his decree he had applied to the same Subordinate Judge, who subsequently passed the decree in favour of the Bank, for sale of the property which had been mortgaged to the Bank. Though the Bank's decree should have been in the form prescribed by Order XXXIV, rule 4 of the Code of Civil Procedure, the Senior Subordinate Judge, either intentionally or by mistake, did not pass a preliminary decree in accordance with the aforesaid rule, but passed a decree merely for money to be realised from (a) the mortgaged property, (b) other property of the judgment-debtors and (c) their persons; and in execution of *N. C.*'s decree the Court made an order on the 9th April, 1919, that the property be sold and that out of the sale proceeds Rs. 25,000 be paid to the Bank, and the rest to the decree-holder *N. C.* The Bank did not dispute that order and on 12th June 1920 applied for execution of its decree under Order XXI, rule 11 of the Code, stating the mode in which the assistance of the Court was required both in the prescribed column and in the body of the application as follows:—"According to the order of the Senior Subordinate Judge, dated the 9th April 1919, Rs. 25,000 are to be paid to the Bank first, and the rest with interest and costs may be

1932

April 27.

paid *pro rata* along with the other decree-holder." And the question for determination was whether that application was an application in accordance with law within the meaning of clause (5) of the third column of Article 182, Schedule I to the Indian Limitation Act.

*Held*, that the Bank's application of 12th June, 1920, sufficiently complied with the requirements of Order XXI, rule 11 of the Code, and was, therefore, an application for execution in accordance with law for the purposes of clause (5) of the third column of Article 182 of the Indian Limitation Act.

*Held also*, that the rule of law is firmly established, that where the decree is free from ambiguity, as in this case, the Court of execution is bound to execute it as it stands, whether it is right or wrong; it being beyond the jurisdiction of the Executing Court to vary the decree;

*Udwant Singh v. Tokhan Singh* (1), followed.

*Appeal under clause 10 of the Letters Patent against the judgment of Jai Lal J., passed in Civil Appeal No. 2455 of 1926, on the 27th September 1927, affirming that of Chaudhri Niamat Khan, Senior Subordinate Judge, Kangra at Dharmsala, dated the 4th June, 1926, holding that the decree-holder is, according to the decree, entitled to realize the decree from the mortgaged land and other property.*

JAGAN NATH AGGARWAL and ASA RAM, for Appellants.

BADRI DAS and HAR GOPAL, for Respondent.

SHADI LAL C. J.—On the 11th December, 1919, SHADI LAL C.J the Punjab National Bank, Limited, obtained a decree against *Rai Sahib* Kanhaya Lal and others for Rs. 34,084-7-9 with costs and interest, "recoverable from the lands" mortgaged to the plaintiff, and also

1932  
 KANAHAYA LAL  
 v.  
 THE PUNJAB  
 NATIONAL BANK,  
 LIMITED.  
 SHADI LAL C.J.

“ from the person and other property of the defendants.” On the 12th June, 1920, the Bank made an application for the execution of the decree, and the main question for determination is whether that application was “ in accordance with law ” within the meaning of clause (5) of the third column of Art. 182 of the First Schedule to the Indian Limitation Act. Now, the application complied with all the requirements of Order XXI, rule 11, of the Code of Civil Procedure, and the only ground, upon which its validity was impeached, was that it did not describe the mode in which the assistance of the Court was required.

A perusal of the application shows that the column relating to the mode, in which the execution was sought, contained the following words: “ According to the order of the Senior Subordinate Judge, dated the 9th April, 1919, Rs. 25,000 are to be paid to the Bank first, and the rest with interest and costs may be paid *pro rata* along with the other decree-holder.” The same prayer was repeated in an amplified form in the body of the application.

Now, in order to understand the prayer for the recovery of Rs. 25,000 it is necessary to mention that another creditor, namely, *Rai Sahib* Nihal Chand, had obtained a decree against the judgment-debtors for the recovery of a certain sum of money, and in execution of his decree he had applied to the same Subordinate Judge, who subsequently passed the decree in favour of the Bank, for the execution of his decree by the sale of the property which had been mortgaged to the Bank. It was in execution of that decree that the Court had made an order on the 9th April, 1919, that the property be sold and that out of the sale proceeds Rs. 25,000 be paid to the Bank, and the rest to

the decree-holder, namely, *Rai Sahib Nihal Chand*. It appears that the Punjab National Bank did not dispute the order, and asked the Court in the application made on the 12th June, 1920, that Rs. 25,000 be paid to the Bank. There can be little doubt that the assistance of the Court was sought for the recovery of that sum of money out of the price to be realized by the sale of the property; and it cannot, therefore, be reasonably urged that the application for execution did not comply with the requirements of Order XXI, r. 11.

It is, however, contended by Mr Jagan Nath Aggarwal on behalf of the judgment-debtors that the suit brought by the Punjab National Bank was founded on a mortgage, and the decree should be treated as one for sale as prescribed by Order XXXIV, rule 4, Civil Procedure Code. It is true that the decree should have been in the form prescribed by that rule, but the fact remains that the Court either intentionally or by a mistake did not pass a preliminary decree in accordance with the aforesaid rule, but passed a decree merely for money to be realized from (a) the mortgaged property, (b) other property of the judgment-debtors and (c) their persons. The rule of law is firmly established that where the decree is free from ambiguity, the Court of execution is bound to execute it whether it is right or wrong. As observed by their Lordships of the Privy Council in *Udwant Singh v. Tokhan Singh* (1) it is beyond the jurisdiction of the executing Court to vary the decree, and the Court must execute the decree as it stands.

It has been held that a decree upon a mortgage, which enables the mortgagee to realise the mortgage

1932

KANAHAYA LAL  
v.  
THE PUNJAB  
NATIONAL BANK,  
LIMITED.

SHADI LAL C.J.

1932

KANAHAYA LAL  
v.  
THE PUNJAB  
NATIONAL BANK,  
LIMITED.  
SHADI LAL C.J.

debt from the mortgaged properties and from the defendant personally, amounts to a decree for the payment of money within the meaning of section 295 of the Civil Procedure Code of 1882, corresponding to section 73 of the Code of 1908 [*vide Hart v. Tara Prassanna Mukherji (1)*]. The correctness of that judgment is, however, impeached by the learned counsel for the judgment-debtors, but it is unnecessary to consider the question whether the decree dealt with in that judgment should or should not have been treated as a "decree for the payment of money," because we have to determine the dispute between the parties upon the terms of the decree passed in the present case. There can be little doubt that under the decree in question the Punjab National Bank was not bound to sell any property, and could ask for the recovery of the money from the judgment-debtors personally. There was, therefore, nothing improper in seeking the assistance of the Court for the recovery of Rs. 25,000, which were to be realized by the sale of the property in execution of the decree obtained by *Rai Sahib Nihal Chand*.

I am accordingly of the opinion that the application of the 12th June, 1920, was an application for execution in accordance with law, and upon that finding it must be held that the last application made by the Bank for the execution of the decree was not barred by time. The learned Judge, from whose judgment this appeal has been preferred, states in clear terms that "it is conceded by the counsel for the appellants that on that finding the application for execution is admittedly within time." It is, therefore, unnecessary to consider the question whether the various applications made after 1920 did or did not constitute

steps in aid of execution within the meaning of clause (5) of Art. 182.

For the reasons stated above I would affirm the judgment of the Single Judge and dismiss the appeal with costs.

BROADWAY J.—I agree.

N. F. E.

*Appeal dismissed.*

**APPELLATE CIVIL.**

*Before Tek Chand and Monroe JJ.*

NATHU AND OTHERS (PLAINTIFFS) Appellants

*versus*

UTTAM SINGH (DEFENDANT) Respondent.

**Civil Appeal No. 2604 of 1927.**

*Jurisdiction (Civil or Revenue)—Suit by some of the village proprietors against their co-proprietors—for declaration that they are entitled to graze their sheep in the village shamilat—without payment of certain dues claimed by the defendants—Punjab Tenancy Act, XVI of 1887, section 77 (3) (o)—whether applicable.*

Plaintiffs brought a suit in the Civil Court, for a declaration that they had been grazing their sheep and goats from time immemorial over the village *shamilat* without payment of any grazing dues and had been passing them through the village without payment of dues known as *kotwal ki rat*; that they were entitled to do so in future, and that the defendants had no right to receive any grazing dues. The plaintiffs claimed to be proprietors in the village like the defendants, possessing the same rights in the *shamilat* as the defendants. The Senior Subordinate Judge dismissed the suit on the ground that the Civil Court had no jurisdiction to try the suit—*vide* section 77 (3) (o) of the Punjab Tenancy Act.

*Held*, that as both parties were co-proprietors in the village and the land for the user of which the defendants claimed the dues was the common land of the village, clause (o) of

1932

KANAHAYA LAL

*v.*

THE PUNJAB  
NATIONAL BANK,  
LIMITED.

SHADI LAL C.J.

BROADWAY J.

1932

May 9.