

1935  
 NAND LAL  
 v.  
 THE CROWN.

struck. This is the type of case for which the second alternative sentence, in our opinion, is provided by the Indian Penal Code. We, therefore, accept the appeal in so far as we set aside the sentence of death and impose instead a sentence of transportation for life; otherwise the appeal is dismissed.

A. N. C.

*Appeal accepted in part.*

**APPELLATE CIVIL.**

*Before Addison and Din Mohammad JJ.*

NAUBAT RAI (DEFENDANT) Appellant

*versus*

CHUNI LAL (PLAINTIFF)  
 ATMA RAM AND OTHERS } Respondents.  
 (DEFENDANTS)—

1935  
 Feb. 13.

Civil Appeal No. 725 of 1932.

*Civil Procedure Code, Act V of 1908, Order XXI, rules 58 and 63 : Claim by objector to attached property — impleading judgment-debtor as a party — whether judgment-debtor can maintain a suit under rule 63.*

In a claim petition under Order XXI, rule 58 of the Civil Procedure Code, objecting to the attachment of certain joint property, attached in the execution of a decree, the objector claimed that the property was exclusively owned by him. He impleaded both the decree-holder and the judgment-debtor as parties to this petition. The judgment-debtor was served, but on his failure to appear an order was passed by the executing Court that the objection proceedings would be *ex parte* so far as he was concerned. The objection succeeded in the executing Court. Thereupon the judgment-debtor brought a suit under Order XXI, rule 63, Civil Procedure Code, claiming a share in the property as his own and he was awarded a decree. On an appeal by the objector-defendant it was contended that the suit by the judgment-debtor did not lie.

*Held* (repelling the contention), that the judgment-debtor, having been made a party to the claim objection, and the order being against him as well as against the decree-holder, the judgment-debtor had under Order XXI, rule 63 a right to institute the suit for a declaration without having to do anything more, such as bringing a suit for partition of the entire joint property.

*Anant Ram v. Damodar Das* (1), referred to.

*First appeal from the decree of Syed Nasir Ali Shah, Subordinate Judge, 1st Class, Jhang, dated 6th February, 1932, declaring that the plaintiff is joint owner of houses, P.1, P.2 and P.3, with defendants Nos. 1-4 and has 1/6th share in each of them and dismissing the suit in respect of site, P.4.*

SHAMBU LAL PURI and MEHR CHAND SHUKLA, for Appellant.

NAND LAL SALOAJA and B. D. BAHL, for Plaintiff, and RATAN LAL CHAWLA, for Defendants-Respondents.

The judgment of the Court was delivered by—

ADDISON J.—This suit was brought by Chuni Lal, son of Ganesh Das, against Naubat Rai, son of Wazir Chand, his cousin, and Atma Ram, Devi Ditta, Jinda Ram, three grandsons of Mangat Rai. *Mussammatt* Jindi Bai, widow of the plaintiff's deceased brother, Jahangiri Lal, was also a defendant. Parshotam Das had four sons—Mangat Rai, Jais Mal, Wazir Chand and Ganesh Das. Jais Mal separated very early from his three other brothers and it is nobody's case that he is concerned with the property in dispute. When he separated, the three brothers—Mangat Rai, Wazir Chand and Ganesh Das—were left joint and their property was joint. Later, however, they separated, and the principal question in this suit is

1935

NAUBAT RAI  
v.  
CHUNI LAL.

1935

NAUBAT RAI  
v.  
CHUNI LAL.

whether there was a partition of the property when they did so or later.

Tirlok Chand - Jinda Ram obtained a decree against the plaintiff, Chuni Lal, and they attached one-half share of the property in dispute along with certain other properties in order to realize their decree against Chuni Lal, on the ground that one-half belonged to their judgment-debtor, Chuni Lal. Naubat Rai, defendant No.1, filed one set of objections to this attachment, alleging that he was the exclusive owner of the property. Atma Ram, Devi Ditta and Jinda Ram, defendants 2 to 4, filed another set of objections saying that they were owners of a one-half share of the property and they admitted that Naubat Rai was entitled to the other half. The orders of the executing Court, dated the 17th November, 1928, were to the effect that both objections succeeded. Thereupon Chuni Lal instituted the present suit under Order 21, rule 63 of the Civil Procedure Code, for a declaration that he was entitled to a one-third share in the four properties in suit, the other two-thirds going to the descendants of Mangat Rai and Wazir Chand.

— The trial Court has given him a declaration as regards three of the properties to the effect that he is joint owner to the extent of 1/6th, but dismissed the suit in respect of the fourth property. It left the parties to bear their own costs. The share of Chuni Lal was cut down to 1/6th on the ground that his brother's widow was entitled to one-sixth as his brother was separate from Chuni Lal before he died.

Against this decision the defendant, Naubat Rai, has preferred First Appeal No.725 of 1932, praying that the decree of the trial Court should be set aside

while Chuni Lal, plaintiff, has preferred First Appeal No.733 of 1932, praying that he should have been given his costs.

The first point taken on behalf of Naubat Rai was that a suit for a declaration did not lie under Order 21, rule 63 of the Civil Procedure Code, as the judgment-debtor was not a party to the objection proceedings and as the decision of the executing Court could only be taken as adverse to the decree-holders, and not to Chuni Lal. It is apparent, however, from the record of the executing Court that Naubat Rai and the other objectors impleaded both the decree-holder firm of Tirlok Chand-Jinda Ram and Chuni Lal in their claim objections. Further, Chuni Lal was served to appear in those objection proceedings and when he did not appear an order was passed by the executing Court to the effect that proceedings would be *ex parte* so far as he was concerned. There is no question, therefore, but that he was made a party to the claim objections, and in these circumstances it seems to us that the order was made against him as well as the decree-holders in those claim proceedings. That being so, Order 21, rule 63, gave him the right to institute the present suit for a declaration without having to do anything more, such as bringing a suit for partition of the entire joint property. It is unnecessary to refer to the numerous rulings on this question as the rule itself is clear enough, but we may say that we are in agreement with the Judges who decided the case reported as *Anant Ram v. Damodar Das* (1), where it was held that it is a question of fact in each case whether a judgment-debtor is a party to objection proceedings and whether the order passed in them is made against him.

1935

NAUBAT RAI

v.

CHUNI LAL.

1935  
NAUBAT RAI  
v.  
CHUNI LAL.

On the merits also we are in agreement with the finding of the trial Judge. When Jais Mal separated from his three other brothers in 1868, the property now in question remained joint. In 1893, Mangat Rai, grandfather of defendants 2 to 4, instituted a pre-emption suit against one Jinda Ram in which he prayed for a decree on the ground that property No.3 belonged to him. In the course of that case on 21st November, 1893, Mangat Rai stated that the house No.3, on the strength of which he had brought the pre-emption suit, was the joint property of himself and his brothers, Wazir Chand and Ganesh Das, the latter being the father of Chuni Lal. He made a similar statement on the 4th January, 1893.

Lakhmi Chand, a creditor of Naubat Rai, applied in 1923 to have Naubat Rai declared an insolvent. At that time defendants 2 to 4, the grandsons of Mangat Rai, filed objections that they had 1/3rd share in properties Nos.1 and 2. This would mean that Naubat Rai had a 1/3rd share and Ganesh Das, the father of the plaintiff, a third share. Further, Naubat Rai in those proceedings included the Multan property in the possession of Chuni Lal as joint family property. This negatives the partition theory now set up by the defendants. Chuni Lal himself was sued in Multan with respect to an ancestral house there by one Rangu Ram in 1907 and in that case Chuni Lal put in a written statement that the sons of Parshotam Das had a fourth share in the house in question. Wazir Chand, father of Naubat Rai, appellant, admitted as a witness in that case that he and his two brothers were joint and that they were joint owners of the share in the house in Multan. When Jais Mal applied for the separation of his share of land in 1880 the shares of his three brothers, Mangat Rai, Wazir Chand and

Ganesh Das, were joint and this state of affairs has continued. There is no doubt, therefore, that the decision of the Court below is correct and that Chuni Lal is entitled to a declaration that he has a 1/6th share in the property mentioned in the decree of the trial Judge. The appeal of Naubat Rai must, therefore, fail and is dismissed with costs.

There is no force in the appeal of Chuni Lal as to costs and it was not seriously pressed. It also is dismissed, but there will be no order as to costs of it.

*P. S.*

*Appeal dismissed.*

### APPELLATE CIVIL.

*Before Addison and Din Mohammad JJ.*

MOHAMMAD QASIM, DECEASED (THROUGH HIS REPRESENTATIVES) AND ANOTHER (DEFENDANTS)

Appellants

*versus*

MST. RUQIA BEGUM (PLAINTIFF) Respondent.

**Civil Appeal No. 1351 of 1930.**

*Indian Registration Act, XVI of 1908, sections 17, 49 : Unregistered document affecting immovable property and also containing a covenant for payment of dower — whether the document can be used for proving the covenant as to payment of dower.*

By an unregistered contract of marriage the plaintiff was given in lieu of prompt dower amounting to Rs.10,000 certain ornaments and four items of immovable property, and the husband expressly agreed to pay the Rs.10,000 dower. In the present suit by the wife for recovery of Rs.10,000 as her dower, it was contended by the defendants that the document, not being registered, could not be used for any purpose whatsoever.

*Held that, although the declaration relating to the rights in immovable property made the document compulsorily*

1935

NAUBAT RAI

*v.*

CHUNI LAL

1935

*Feb. 14.*