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v.  
MIAN SINGH.

As a result, we maintain the decree of the Subordinate Judge so far as it relates to the land at village Man Saindwal, but accept the appeal to the extent of dismissing the plaintiffs' suit as regards the house at Man Saindwal and the land at village Aliwal Jattan, both of which have been found by us to be non-ancestral. Parties will bear their own costs throughout.

*P. S.*

*Appeal accepted in part*

### LETTERS PATENT APPEAL.

*Before Addison and Din Mohammad JJ.*

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*Feb. 20.*

RADHA KISHAN-SOHAN LAL (DECREE-HOLDER)

Appellant

*versus*

BIHARI LAL-ASA NAND AND OTHERS THROUGH  
LOK NATH (JUDGMENT-DEBTORS) Respondents.

**Letters Patent Appeal No. 8 of 1934.**

*Execution of Decree — passed against a dead person — whether a nullity in the eye of law — and whether the objection can be taken in executing Court.*

*Held*, that a decree against a dead person is a nullity and that this objection can be taken in the executing Court.

*Anwar-ul-Haq v. Nazar Abbas (1), S. A. Nathan v. S. R. Samon (2), relied upon. Ghulam Mohammad v. Mst. Fazal Nishan (3), referred to.*

*Letters Patent Appeal from the order passed by Bhide J. in C. A. No. 230 of 1933, on 15th November, 1933, affirming that of Lala Rala Ram, Senior Subordinate Judge, Muzaffargarh, dated 21st November, 1932 (who affirmed that of Chaudhri Bashir Ahmad, Subordinate Judge, 4th Class, Muzaffargarh, dated*

(1) (1925) I. L. R. 6 Lah. 313. (2) (1931) I. L. R. 9 Rang. 480 (F. B.).

(3) (1932) I. L. R. 13 Lah. 25.

7th June, 1932), dismissing the application for execution.

SHAMAIR CHAND and QABUL CHAND, for Appellant.

HAR GOPAL, for Respondents.

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The judgment of the Court was delivered by—

ADDISON J.—A money decree was being executed in the Court of a Subordinate Judge at Muzaffargarh to which it had been transferred by the Court of a Subordinate Judge at Ludhiana. The proceedings were against the sons of Asa Nand as his legal representatives. An objection was raised that the decree was a nullity, as Asa Nand was the last surviving partner of the firm and he was dead at the time that the decree was passed against it. This objection was upheld by the Court below and the decree-holder appealed to this Court. His appeal was dismissed by a Judge and this Letters Patent Appeal from that decision has been admitted to a hearing.

It was held in *Anwar-ul-Haq v. Nazar Abbas* (1) that a decree passed against a dead person was a nullity and that this objection could be taken in the executing Court. The same view was taken in *S. A. Nathan v. S. R. Samon* (2) by a Full Bench which, however, made it clear that it was only when the adjudication was not a decree at all in the eyes of the law that an executing Court could disregard it as a nullity. It was also held that “a subsisting decree passed by a duly constituted Court that has not been set aside in proceedings by way of appeal, revision, review or otherwise by due process of law, is not to be treated as a mere nullity, but is binding and conclusive against the parties thereto. A Court to which

(1) (1925) I. L. R. 6 Lah. 313. (2) (1931) I. L. R. 9 Rang. 480 (F. B.).

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such a decree has been transferred for execution must take the decree as it stands and is not entitled to question the validity of the decree upon the ground that the decretal Court had no jurisdiction, territorial, personal, or pecuniary, to pass it." This view was endorsed by a Division Bench of this Court, to which one of us was a party, in *Ghulam Mohammad v. Mussammat Fazal Nishan* (1). Since then a Division Bench of this Court in *Asmatullah v. Forbes, Forbes, Campbell & Co.* (2) has doubted the correctness of these decisions and seems to have gone further than they did. This Bench seems to be of the view that territorial, personal and pecuniary jurisdiction can also be challenged before the executing Court.

The question is not relevant to this decision, but we consider it desirable to state that we see no reason to go further than what was laid down in *Ghulam Mohammad v. Mst. Fazal Nishan* (1) and *S. A. Nathan v. S. R. Samon* (3). *Asmatullah v. Forbes, Forbes, Campbell & Co.* (2) purports to be based on *Inanendramohan Bahaduri v. Kabeendranath Chakrabarti* (4). That was, however, a case where on the face of it the decree was a nullity and we do not consider it to be an authority for the proposition laid down in the later decision of this Court.

In any view of the law this appeal must fail and is dismissed with costs.

A. N. C.

*Appeal dismissed.*

(1) (1932) I. L. R. 13 Lah. 25. (3) (1931) I. L. R. 9 Rang. 480 (F. B.).  
(2) 1934 A. I. R. (Lah.) 652. (4) (1933) I. L. R. 60 Cal. 670 (P. C.).