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stated in a recent decision we must assume that the person against whom the decree for possession has been passed recognises the decree, and is not prepared to take up the position that the decree is not binding against him. It can safely be presumed that if such a person remains in possession until execution proceedings are taken, he does not thereby assert that he has a title against the decree. Therefore, as in this case the heirs of Yeshwant got into possession, they were entitled to remain there, as the plaintiff cannot show that she has been in possession adversely against the world for twelve years. The appeal, therefore, must be dismissed with costs.

Appeal dismissed.

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APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Fawcett.

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RAMNATH MULCHAND AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS
v. GAJANAN PANDURANG LIMAYE (ORIGINAL DEFENDANT), RESPONDENT².

*Civil Procedure Code (Act V of 1908), section 115—Inherent powers—
Executing Court—Decree under execution cannot be questioned.*

It is not competent to an executing Court to go behind a decree and question its propriety.

Ramchandra Govind v. Jayanta⁽¹⁾, followed.

SECOND appeal from the decision of J. D. Dikshit, District Judge of Sholapur, reversing the decree passed by S. N. Sathaye, First Class Subordinate Judge at Sholapur.

Execution proceedings.

² Second Appeal No. 945 of 1917.

⁽¹⁾ (1920) 45 Bom. 503.

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The decree under execution was passed in terms of of an award, which was made in arbitration out of Court.

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The plaintiffs applied to execute the decree.

The first Court allowed the execution to proceed. On appeal, the District Judge dismissed the darkhast on the ground that the award was not valid since there was no difference between the parties for the arbitrators to decide.

The plaintiffs appealed to the High Court.

P. B. Shingne, for the appellant :—This is a case which arises in execution. At this stage of the proceeding it is not open to the judgment-debtor to reopen the decree, which was passed on mutual reference to arbitration and consequent award. His plea in the first Court was different from the one found out in his favour by the lower appellate Court. It has been decided recently in *Ramchandra Govind v. Jayanta*⁽¹⁾.

Respondent did not appear.

MACLEOD, C. J. :—In this case a decree was passed on an award which the plaintiffs sought to execute. The trial Court directed execution to proceed. In appeal this order was set aside, and the application for execution was rejected with costs on the ground that there was no real point of difference between the parties on which a reference to arbitration could be made. The learned appellate Judge said :

“The case having come before me in appeal I am in a position to treat this decree passed without jurisdiction as inoperative and to exercise the inherent powers of the Court under section 151 of the Civil Procedure Code and to refuse to the decree-holder the relief which he is asking by way of execution. Had the case come to my notice in any other way I would have made a reference to their Lordships under section 115 of the Civil Procedure Code to set aside the decree passed upon the so-called award on the authority of *Velchand v. Liston*⁽²⁾.”

⁽¹⁾ (1920) 45 Bom. 503.

⁽²⁾ (1914) 16 Bom. L. R. 517.

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In *Ramchandra Govind v. Jayanta*⁽¹⁾ a very similar question arose, and the Court said :

" Whatever powers the Court had to decide questions relating to the execution of the decree, we are of opinion that it is perfectly clear that the Court had no power to deal with the decree itself. The Court executing the decree cannot deal with the question whether the decree should stand or whether it should be set aside on any of the grounds on which a decree can be set aside. "

And it was further held that section 151 of the Code did not give the lower appellate Court authority to interfere in the way it did. Therefore this appeal must be allowed with costs throughout, and the order of the lower Court directing execution to proceed restored.

Appeal allowed.

R. R.

(1) (1920) 45 Bom. 503.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Fawcett.

1920.

September
27.

KRUSHALBHAI PARAGJI DESAI AND ANOTHER (ORIGINAL DEFENDANTS Nos. 1 AND 2), APPELLANTS v. DULLABHBHAI PARAGJI AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS*.

Surat District—Desaigiri allowance.

In the District of Surat, Desaigiri allowance is alienable.

Bai Jadav v. Narsilal⁽¹⁾, referred to.

SECOND appeal from the decision of W. Baker, District Judge of Surat, confirming the decree passed by T. N. Desai, Additional Subordinate Judge at Bulsar.

Suit for declaration.

One Bhaidas, who owned a Desaigiri allowance in Kharsad, devised it by will to Khandubhai in 1872. On

* Second Appeal No. 235 of 1919.

(1) (1900) 25 Bom. 470.