

APPELLATE CIVIL.

Before Mr. Justice Phear and Mr. Justice Ainslie.

1873
Feb'y, 7

MUSSAMUT RUTTANJOTE KOOER (JUDGMENT-DEBTOR) v. RAM
DASS (DECREE-HOLDER).*

Bengal Civil Courts' Act (VI of 1871), s. 22—Jurisdiction—Appeal—Execution—Act XXIII of 1861, s. 11.

The appeal from an order of a Subordinate Judge directing execution to issue lies to the District Judge, and not to the High Court, where the amount claimed in a suit is under Rs. 5,000, although the amount sought to be recovered in execution has, by the addition of interest since decree, grown to a sum exceeding Rs. 5,000.

A DECREE was passed in this case on the 22nd September 1862 for the amount claimed with interest. The amount or value of the subject-matter in dispute in the suit was admitted by both parties to be less than Rs. 5,000. In April 1872, the respondent, who had purchased the decree, applied for execution thereof, but by that time the amount decreed had grown by the addition of interest to a sum exceeding Rs. 5,000. Upon the hearing of the application for execution, the judgment-debtor raised certain objections, which were, however, overruled by the Subordinate Judge, who ordered execution to issue. The judgment-debtor appealed against this order to the High Court.

Baboos *Romesh Chunder Mitter* and *Rughoo Buns Sahoy* for the appellant.

Baboos *Annodapersaud Banerjee* and *Abinash Chunder Banerjee* for the respondent.

Baboo *Abinash Chunder Banerjee* for the respondent objected to the hearing of the appeal on the ground that, under Act VI of 1871, s. 22 (1), the appeal lay to the District Judge, and not

* Miscellaneous Regular Appeal, No. 211 of 1872, from an order of the Subordinate Judge of Shahabad, dated the 23rd April 1872.

(1) *Act VI of 1871, s. 22.*—"Appeals the District Judge, except where the from the decrees and orders of Subor- amount or value of the subject-matter in dinate Judges and Munsifs shall, when dispute exceeds Rs. 5,000, in which case such appeals are allowed by law, lie to the appeal shall lie to the High Court."

to the High Court. A law which takes away the right of appeal in regard to a suit, for the same reasons takes away the right of appeal in execution proceedings—*Anund Chunder Roy v. Sidhy Gopaul Misser* (1) and *Mobarukoonissa Begum v. Ozeer Jemadar* (2). Execution proceedings, being merely in furtherance of the original suit, are regulated by the provisions which govern the suit itself—*Ramanoogra Sahoy v. Byjnath Lall* (3). The subject-matter in dispute means the amount claimed, and not the amount which may ultimately be decreed—*In the matter of Duli Chand* (4). Under the old law the appeal in the present case would have lain to the District Judge; see Act XVI of 1868, s. 18. If the jurisdiction depends on the amount sought to be recovered in execution, s. 20 of Act VI of 1871, which limits the Munsif's jurisdiction to suits "in which the amount or value of the subject-matter in dispute does not exceed Rs. 1,000," would render inoperative s. 362 of Act VIII of 1859, which provides that the Court which passed the first decree in the suit is the Court which shall execute the decree passed on appeal.

Baboo *Romesh Chunder Mitter* for the appellant.—The subject-matter now in dispute is the amount claimed in execution. These execution proceedings are proceedings to enforce a demand; and according to Peacock, C.J., in *Golan Ally Chowdhry v. Gopaul Lall Tagore* (5), "any proceeding in a Court of

(1) 8 W. R., 112.

(2) *Ibid*, 107.

(3) *Before Mr. Justice L. S. Jackson and Mr. Justice Ainslie.*

RAMANOOGRA SAHOY AND ANOTHER
(DEFENDANTS) v. BYJNATH LALL
(DECREE-HOLDER).*

The 15th February 1871.

Appeal—Execution—Jurisdiction.

Baboo *Mohesh Chandra Chowdhry* for the respondents.

Baboo *Khetter Nath Bose* for the appellant.

The judgment of the Court was delivered by

JACKSON, J.—The appeal in this case

lay properly to the Zillah Judge. The circumstance of this Court having for special reasons thought proper to call up the appeal in the original case from the Court below, and to try it here as a regular appeal will not entitle the parties to prefer an appeal, directly to this Court in the proceedings in execution of the decree passed in that case. The proceeding will be remitted to the Zillah Judge, who will admit the appeal, and proceed to dispose of it in the same manner as if it had been originally presented in his Court.

(4) 9 B. L. R., 190.

(5) Case No. 1348 of 1867, dated

30th March 1868.

* Miscellaneous Regular Appeals, Nos. 380 and 430 of 1870, from the orders of the Subordinate Judge of Tirhoot, dated the 22nd August 1870.

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RUTTANJOTE
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v.
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