

As regards the second question, it seems probable that section 60 of the Bengal Tenancy Act was applicable to the case of *Dhoroni-dhur Sen v. Wajidunnissa Khatoon* (1), but it does not appear to have been relied on by the Judges who seem to have decided it solely upon the provisions of the Land Registration Act, and for the reasons given, I am of opinion that, upon that Act, it was rightly decided.

Attorneys for the plaintiff: Messrs. *Remfry & Rose*.

Attorney for the defendants: Mr. *S. K. Dev*.

S. C. G.

1895.

ALIMUDDIN  
KHAN  
v.  
HIRA LALL  
SEN.

## APPELLATE CIVIL.

*Before Mr. Justice Prinsep and Mr. Justice Norris.*

1895  
July 29.

JAGARNATH SINGH (JUDGMENT-DEBTOR) v. BUDHAN AND OTHERS  
(DECREE-HOLDERS.)<sup>a</sup>

*Appeal—Order dismissing an appeal for default—Decree, Definition of—Civil Procedure Code (XIV of 1882), sections 2 and 556.*

An order dismissing an appeal for default under section 556 of the Civil Procedure Code does not fall within the definition of "decree" in section 2, and there is no appeal from such order, *Ramchandra Pandurang Naik v. Madhav Purushottam Naik* (2) dissented from.

THIS appeal arose out of proceedings in execution of a decree. The decree directed the removal of certain bunds and the opening of two channels for passage of water over the lands of the judgment-debtor. The position and size of the bunds were specified in the decree, but it was not clear from its terms how the channels were to be opened. On application for execution being made by the decree-holders, the judgment-debtor objected that the directions of the decree had been already complied with. The matter came up in appeal before the District Judge's Court, and the case was remitted to the Munsif for determination of what was a "reasonable" compliance with the directions given in the decree. The Munsif then passed an order on the 29th June 1894 directing that the channels should be opened in a specified way, and

<sup>a</sup> Appeal from Order No. 43 of 1895, against the order of H. Holmwood, Esq., District Judge of Gya, dated the 31st of August 1894, affirming an order of Babu Amulya Chandra Ghose, Munsif of that District, dated the 29th of June 1894.

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against that order an appeal was preferred by the judgment-debtor to the District Judge. Notice of appeal was issued, fixing the 3rd August 1894 for hearing, but the return of service was received on the 3rd September. In the meantime, on the 4th August, the appeal was called on for hearing, and the following order was passed :—

“ Nobody appears for the appellants. The respondents appear. The appeal is dismissed with costs.”

The judgment-debtor appealed to the High Court.

Babu *Karuna Sindhu Mukerjee* and Dr. *Asutosh Mukerjee* for the appellants.

Mr. *C. Gregory* and Moulvie *Mahomed Yusuf* for the respondents.

Moulvie *Mahomed Yusuf*, on behalf of the respondents, took a preliminary objection on the ground that the order of the District Judge was one under section 556 of the Civil Procedure Code, and was not a decree within the definition in section 2, and no appeal would lie from that order.

Babu *Karuna Sindhu Mukerjee* contended that the order was an adjudication of the appellants' right to be heard and it decided the appeal. It therefore came within the definition of a decree. *Ramchandra Pandurang Naik v. Madhav Purushottam Naik* (1).

The judgment of the High Court (PRINSEP and GHOSE, JJ.) was as follows :—

This is a second appeal against an order passed by the lower Appellate Court under section 556 of the Code of Civil Procedure in consequence of the default of the appellants.

Objection is taken by the respondents that no appeal lies.

As an authority for the appeal the pleader for the appellants cites the case of *Ramchandra Pandurang Naik v. Madhav Purushottam Naik* (1). That case is, however, different from the case before us, inasmuch as the appellants in this case was not represented, and this appeal was dismissed under section 556. We cannot, however, agree with the learned Judge of the Bombay High Court that an order dismissing an appeal on default properly

(1) I. L. R., 16 Bom., 23.

falls within the definition of a decree as contained in section 2 of the Code. The law enables an appellant to apply for the re-admission of his appeal (section 558), and it gives him the right of appeal against the order refusing such an application. Similar provision is made in regard to a plaintiff whose suit is dismissed on default. But the law does not expressly give an appellant the right to appeal directly against an order under section 556. We cannot agree with the learned Judges of the Bombay High Court that an order dismissing an appeal on default is the "formal expression of an adjudication upon a right claimed." It seems to us rather that through his default the appellant has lost his right to obtain the adjudication of his right claimed, that is, the right claimed in the proceedings or suit. The right to be heard does not in our opinion come within the definition of a decree, and by providing specially for redress against such an order it seems to us that the law does not contemplate an appeal against such an order.

With the exception of the case cited there is ample authority for holding that an appeal against an order under section 556 is not admissible.

The appeal is, therefore, dismissed with costs.

S. C. C.

*Appeal dismissed.*

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## ORIGINAL CIVIL.

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*Before Mr. Justice Sale.*

NITTO MOYE DASSEE AND ANOTHER (PLAINTIFFS) v. SOOBUL CHUNDER LAW AND ANOTHER (DEFENDANTS).\*

1895  
July 16.

*Interrogatories—Discovery—Production of documents—Code of Civil Procedure (Act XIV of 1882), sections 121, 125, 129, 130, 133, 134—Definition of term "family."*

To interrogate a party to a suit as to the construction he puts on the meaning of the word "family" is not admissible, although, to ask him who the persons are who are living in his household, is so. The former question if replied to would only be of value as the opinion of a party to a suit on what is really a question of law.

Under the Civil Procedure Code interrogatories for the purpose of eliciting facts bearing upon issues arising in a suit are limited in operation and are not permissible in cases where the procedure provided by section 134 of the Code is applicable.

\* Suit 689 of 1894.