

1895 months have expired, then the provisions of section 524 come in, and the person in whose possession it was found can come forward and show that it is his own. We cannot say that the Magistrate has in any way exceeded his powers, and, therefore, these two rules must be discharged.

QUEEN-
EMPRESS
v.
MAHALA-
BUDDIN.

S. C. B.

Rules discharged.

APPELLATE CIVIL.

Before Mr. Justice Prinsep and Mr. Justice Ghose.

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May 6.

DEBI DIAL SAHU (DECREE-HOLDER) v. MOHARAJ SINGH
(JUDGMENT-DEBTOR).*

Execution of decree—Transfer of decree for execution—Civil Procedure Code (Act XIV of 1892), sections 223, 226—Execution of decree passed in another district—Jurisdiction.

On the application of the decree-holder, a decree for money passed by a Munsif in one district was sent for execution to the Court of a Munsif in another district, and not to the District Court, as provided for in section 223 of the Civil Procedure Code: *Held*, that the Munsif's Court to which the decree was sent for execution had no jurisdiction to execute it without an express order of the District Judge under section 226.

THE appellant obtained a decree for rent in the Munsif's Court at Daltongunj in the district of Palamow, and applied to that Court for transmission of the decree for execution in the Court of the Munsif of Aurungabad in the district of Gya. The application was granted and the decree was sent for execution directly to the Court of the Munsif at Aurungabad. The appellant then applied for execution of his decree in the latter Court. One of the objections raised by the judgment-debtor was that the application could not be granted, as the decree "did not come to the Court of Aurungabad through the proper channel."

The last paragraph of section 223 of the Code of Civil Procedure enacts:—

*Appeal from Appellate Order No. 129 of 1894, against the order of A. C. Brett, Esq., District Judge of Gya, dated the 29th January 1894, reversing the order of Babu Suresh Chunder Banerjee, Munsif of Arrah, dated the 12th of July 1893.

“If the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed the decree, such Court shall send the same directly to the former Court. But if the Court to which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court of the district in which the decree is to be executed.”

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The Munsif at Aurungabad allowed the execution; but, on appeal, the District Judge of Gya set aside his proceedings as *ultra vires*.

The decree-holder appealed to the High Court.

Moulvie *Mahomed Habibulla* for the appellant contended that the omission to pass the decree through the channel of the District Court was a mere informality not affecting the jurisdiction of the Aurungabad Court. The District Judge had only to pass a formal order to send down the papers to Aurungabad. The Munsif's order was not *ultra vires* on account of such a defect as this.

Babu *Mohabir Sahai* for the respondent.—Section 223 begins by providing for execution of a decree in the Court to which it is sent for execution *under the provisions hereinafter contained*. Reading this part of the section with the words “shall send it to the District Court” in the end of that section, it is clear that the procedure of transmission to the District Judge was an important one, and that the law meant it to be strictly followed. The object is made clear by section 226, which authorizes the District Court, either to execute the decree itself, or to authorize a subordinate Court to do so. The Munsif at Daltongunj had no authority to send the decree to the Munsif at Aurungabad, and the latter Court had not been authorized by the District Court of Gya to proceed with the execution.

Moulvie *Habibulla* was heard in reply.

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

The decree in this case was passed by the Munsif of Daltongunj for money. An application was made by the decree-holder to have it sent for execution by the Munsif of Aurungabad by sale of

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immovable properties within the jurisdiction of that Court. The Munsif of Daltongunj, in disregard of the last clause of section 223 of the Code of Civil Procedure, sent this decree for execution direct to the Munsif of Aurungabad, instead of through the District Court of Gya. An objection was at once made by the judgment-debtor that, inasmuch as the authority of the District Court of Gya was wanting, the Munsif of Aurungabad was without jurisdiction. The Munsif disallowed this objection; but the District Judge on appeal held that it was fatal, and he accordingly disallowed the proceedings in execution. The decree-holder has appealed.

This point is not free from difficulty, for it involves the determination of, whether this was only an irregularity, or a matter affecting the jurisdiction of the Court of Aurungabad. After much consideration, however, we have come to the conclusion that the Munsif of Aurungabad had no jurisdiction without an express order of the District Judge passed under section 226. The intention of the Legislature as expressed in section 226 seems to have been to give the Court of the District in which it was desired to execute a decree which was passed by the Court of another District supreme authority in regard to the execution of that decree, and to provide that it is only by an order passed by the District Court that any subordinate Court in that district is empowered to proceed in such a matter. Section 226 directs that, after receipt of the necessary papers from the Court which passed the decree, the decree or order may, if the Court to which it is sent be the District Court, be executed by such Court or by any subordinate Court which it directs to execute the same. The District Court, no doubt, has jurisdiction over the entire District, and the Judge, therefore, has the option given to him of executing the decree himself, or, if he so thinks fit, of directing any subordinate Court to execute the same. Until such an order has been passed, we are of opinion that no subordinate Court has jurisdiction to execute such a decree. The appeal is, therefore, dismissed with costs.

S. C. C.

Appeal dismissed.