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contention, has cited the cases of *Bholabhai v. Adesang* (1), *Govind* v. *Dhondbarav* (2), *Vithinga Padayachi* v. *Vithilinga Mudali* (3) and *Misir Raghobardial* v. *Sheo Baksh Singh* (4) which, it is said, lay down that to make a matter *res judicata* the two suits must be open to appeal in the same way. Mr. Bonnerjee on the other hand, has called our attention to the case of *Rai Charan Ghose* v. *Kumud Mohun Dutt* (5) which is a decision of this Court and in which the contrary view has been held. We agree with the views expressed in this last mentioned case and must, therefore, follow it.

As to the objection on the ground of the incompetency of the Munsif, who decided the former suit, to decide a suit of the value of the present suit, it appears that the claim on account of road cess and public works cess was below Rs. 1,000, and was therefore within the competency of a Munsif to try. The plaintiff in this suit joined several causes of action against the same defendant together, and hence instituted her suit in the Subordinate Judge's Court. She therefore joined together several suits. She cannot be allowed to evade the provisions of s. 13 in this way. It would have been perfectly competent for a Munsif to try the plaintiffs present suit for road cess and public works cess.

The appeal, therefore, fails. We dismiss it with costs.

M. N. R. *Appeal dismissed.*

Before Mr. Justice Rampini and Mr. Justice Pratt.

1900. *June* 28.

LALNARAIN SINGH AND ANOTHER (JUDGMENT-DEBTORS) v. MAHOMED RAFIUDDIN (DECREE-HOLDER).*

Appeal—Order dismissing objections to the execution of decree—Dismissal for default—" Decree"—Civil Procedure Code (Act XIV of 1882 as amended by Act VII of 1888 and Act VI of 1892), ss. 2, 244 (c), 540, 647.

* Appeal from Order No. 2 of 1900, against the order of W. H, Vincent, Esquire, District Judge of Bhagalpur, dated the 22nd of September 1899, affirming the order of Babu Harakrishna Chatterjee, Subordinate Judge of Monghyr, dated the 29th of April 1899.

(1) (1884) I. L. R., 9 Bom., 75.
(2) (1890) I. L. R., 15 Bom., 104.
(3) (1891) I. L. R., 15 Mad., 111.
(4) (1882) I. L. R., 9 Calc., 439 ; L. R., 9 I. A., 197.
(5) (1897) I. L. R., 25 Calc., 571.

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An order dismissing objections to the execution of a decree, for default, is a "decree" within the meaning of s. 2 of the Code of Civil Procedure, and an appeal lies from such an order under s. 540 of the Code as amended by Act VII of 1888.

Mansab Ali v. *Nihal Chand* (1), *Jagarnath Singh* v. *Budhan* (2), and *Anwar Ali* v. *Jaffer Ali* (3) distinguished.

THE decree-holder having applied to the Subordinate Judge of Monghyr for execution of a decree, the judgment-debtors raised an objection, amongst others, that the decree was barred by limitation. On the date of hearing of these objections the judgment-debtors' pleader appeared and pleaded "want of instructions," and thereupon the Subordinate Judge dismissed those objections for default. The judgment-debtors preferred an appeal against this order to the District Judge who held that no appeal lay to him from such an order; and he dismissed the appeal relying upon the cases of *Mansab Ali* v. *Nihal Chand* (1), *Jagarnath Singh* v. *Budhan* (2), and *Anwar Ali* v. *Jaffer Ali* (3), and also upon s 647 of the Code of Civil Procedure as amended by Act VI of 1892.

The judgment-debtors appealed to the High Court.

Babu *Akhoy Coomar Banerjee* for the appellants.

Babu *Jogesh Chunder De* for the respondent.

1900, JUNE 18. The judgment of the Court (RAMPINI and PRATT, JJ.) was delivered by

RAMPINI, J.—This is an appeal against a decision of the District Judge of Bhagalpur, dated the 22nd September 1899.

The case in which the Subordinate Judge's decision was passed was an execution case. It appears that execution had been applied for by the decree-holder, but the judgment-debtor raised certain objections, one of which, we are told, was that the decree was barred by limitation. On the date fixed for the hearing of the judgment-debtors' objections, their pleader appeared and pleaded

(1) (1893) I. L. R., 15 All., 359.
(2) (1895) I. L. R., 23 Calc. 115.
(3) (1896) I. L. R., 23 Calc., 827.

"want of instructions"; and the Subordinate Judge of Monghyr recorded the following order :—

"The judgment-debtors' Vakil pleads want of instructions. Their objections, which are not very plausible on their face, must be dismissed for default, etc."

Against this order an appeal was preferred to the District Judge, who, on the 22nd of September 1899, held that no appeal lay to him, as the case had been dismissed for default, and the order of the Subordinate Judge was an order and not a decree, and the proper course for the appellant before him was to apply for a rehearing under s. 108 of the Code of Civil Procedure, or s. 103 or similar sections. He further relied upon the addition to s. 647, Civil Procedure Code, made by the amending Act VI of 1892, and upon the cases of *Mansab Ali* v. *Nihal Chand* (1), *Jagarnath Singh* v. *Budhan* (2), and *Anwar Ali* v. *Jaffer Ali* (3).

The judgment-debtors now appeal; and on their behalf it has been urged that the District Judge's decision is wrong and that an appeal did lie to him.

We think that this plea must prevail. The order of the Subordinate Judge of Monghyr appears to have been passed under s. 244, clause (c) of the Code of Civil Procedure being an order determining a question "relating to the execution, discharge or satisfaction of a decree." That being so, it was a decree within the meaning of s. 2 of the Code of Civil Procedure, and an appeal would lie under the addition to s. 540, made by the amending Act VII of 1888.

The learned pleader for the respondent in this case contends that the order passed by the Subordinate Judge was not an order passed *ex parte*. If that be so, then there was an appeal under s. 540 without the addition made to it by Act VII of 1888, while, if it is an *ex parte* order, then an appeal lies under the addition to the section. So that in either case an appeal lies.

With regard to the provisions of s. 647, which the District Judge has referred to, we would only say that the explanation

(1) (1893) I. L. R., 15 All., 359.
(2) (1895) I. L. R., 23 Calc., 115.
(3) (1896) I. L. R., 23 Calc., 827.

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added to that section by Act VI of 1892 must be read with the addition to s. 540 made by Act VII of 1888.

As for the cases referred to by the District Judge, that officer has apparently overlooked the fact that they relate to orders with regard to appeals, and not with regard to original suits or proceedings. The learned pleader for the appellants in this case has called our attention to the reasoning of the Judge who decided the case of *Mansab Ali* v. *Nihal Chand* (1). According to that learned Judge an order dismissing a suit for default is to be regarded in exactly the same light as an order dismissing an appeal for default. But this case seems to have been decided according to the law as prevalent before the addition made to s. 540 by the amending Act VII of 1888, or at all events without reference to the clause so added. For this reason, this case cannot, in our opinion, be relied on.

On these grounds we decree this appeal and remand the case to the lower Appellate Court in order that it may be disposed of on the merits.

The costs will abide the result.

B. D. B. *Appeal allowed and case remanded.*

MATRIMONIAL JURISDICTION.

Before Mr. Justice Harington.

1900
Dec. 13.

OUTHWAITE *v.* OUTHWAITE AND DIAZ.

Costs—Suit for dissolution of marriage—Costs between party and party—Costs between Attorney and client—Liability of Co-respondent—Damages—Divorce Act (IV of 1869), s. 45—Civil Procedure Code (Act XIV of 1882), s. 220—Practice.

Where a husband obtained an order for dissolution of marriage and costs but no damages were asked for by the petitioner against the co-respondent, it was ordered that the costs granted should include costs as between attorney and client.

THE husband petitioned for dissolution of marriage by reason

(1) (1893) I. L. R., 15 All., 359.