

## CIVIL RULE.

Before Mr. Justice Coxe and Mr. Justice Bell.

JAGADISH CHANDRA SHAHA

v.

KRIPA NATH SHAHA\*.

1908  
Aug. 10th.

*Civil Procedure Code (Act XIV of 1852), ss. 295, 244, 622—Rateable distribution—Different judgment-debtors—Appeal against order under s. 295, if lies—Jurisdiction of High Court to interfere under s. 622.*

An order under s. 295 of the Civil Procedure Code passed as between parties who are not the same as in the decree, in execution of which assets were realized under s. 295, is not a decree under s. 244, and no appeal lies against the order, and the order of the District Judge on appeal, setting aside the order of the Munsif, is without jurisdiction.

*Held further*, that when an order is wholly without jurisdiction, the High Court should interfere under s. 622.

*Gonesh Das Bagria v. Shiva Lakshman Bhakat* (1), not applicable. *Ramasamy Chettiar v. Orr* (2) followed. *Dayaram Jagjivan v. Govardhandas Dayaram* (3) distinguished.

*Prosunno Kumar Sanyal v. Kalidas Sanyal* (4) referred to.

CIVIL RULE granted to Jagadish Chandra Shaha.

The petitioner and his minor brother, represented by his mother and guardian, instituted a suit for the recovery of money against one Sree Charan Pal and three others—Raghu Nath, Baikuntha Nath and Krishna Nath Pal in the Court of the 1st Munsif of Dacca and attached before judgment some moveable properties belonging to the said four judgment-debtors and obtained a decree against them.

Thereafter some persons other than Kripa Nath Shaha, Sanatan Shaha and others, who had obtained a decree against the same four judgment debtors and the said Kripa Nath, Sanatan and others, (of whom, some had obtained decrees

\* Civil Rule No. 2310 of 1908, against the order of E. J. Drake-Brockman, District Judge of Dacca, dated 16th May 1908, reversing the order of the 1st Munsif of Dacca, dated 21st March 1908.

(1) (1903) I. L. R. 30 Calc. 583.

(3) (1904) I. L. R. 28 Bom. 458.

(2) (1902) I. L. R. 26 Mad. 176.

(4) (1892) I. L. R. 19 Calc. 683;

L. R. 19 I. A. 66

against Sree Charan Pal alone and some against Sree Charan Pal and one of the other three judgment-debtors), applied before the 1st Munsif of Dacca under section 295 of the Code of Civil Procedure for rateable distribution of the assets realized by the sale of moveable properties attached before judgment in execution of the decree obtained by this petitioner and his brother.

On the 21st March 1908, the 1st Munsif of Dacca rejected the application of Kripa Nath Shaha, Sanatan Shaha and the others, who had decrees, but not against all the judgment-debtors. They preferred an appeal against the order of the Munsif, making only the petitioner the respondent. On the 16th May the District Judge of Dacca decreed the appeal *ex parte*.

On the 27th May, the petitioner filed an application for the rehearing of the appeal, alleging, amongst other grounds, that, in consequence of the seal of the District Judge's Court having been affixed on the place on which the date of hearing was written in the notice served on the petitioner, the date was made indistinct.

The application being rejected, the application under section 622 was made to this Court.

*Babu Upendra Lal Ray* for the petitioner. No appeal lies from an order under section 295: *Gogaram v. Kartick Chunder Singh* (1), *Kashi Ram v. Mani Ram* (2). Section 588 is clear on the point. The order of the District Judge is therefore without jurisdiction. The Full Bench case of *Gonesh Das Bagria v. Shiva Lakshman Bhakat* (3) is inapplicable, that case referring to a regular suit. The order passed cannot be taken as one under section 244, the decrees being separate and the parties different: *Kashi Ram v. Mani Ram* (2).

*Babu Sarat Chandra Basak* for the opposite party. The order is under section 244 and is appealable: *Prosunno Kumar Sanyal v. Kali Das Sanyal* (4). The section should be liberally construed. The Full Bench case (3) is applicable. Ad-

(1) (1868) 9 W. R. 514.  
2) (1892) I. L. R. 14 All. 210.

(3) (1903) I. L. R. 30 Calc. 583.  
(4) (1892) I. L. R. 19 Calc. 683;  
L. R. 19 I. A. 166.

1908  
JAGADISH  
CHANDRA  
SHAHA  
v.  
KRIPA NATH  
SHAHA.

1908  
 JAGADISH  
 CHANDRA  
 SHAHA  
 v.  
 KRIPA NATH  
 SHAHA.

mitting that no appeal lay to the District Judge, the High Court should not interfere in such cases. The discretion under section 622 should be exercised very carefully and only when positive injustice has resulted.

COXE AND BELL JJ. In this case the petitioners obtained a decree against certain judgment-debtors. The opposite party had obtained a decree against certain judgment-debtors, who are not exactly identical with those of the petitioners, and had applied for rateable distribution. The Munsiff of Dacca refused this application on the ground that the judgment debtors were not identical. Against this order, the opposite party appealed to the District Judge; and the District Judge, following the decision in *Gonesh Das Bagria v. Shiva Lakshman Bhakat* (1), set aside the Munsiff's order and directed that the opposite party should share in the rateable distribution.

The petitioner has applied to this Court under section 622 of the Civil Procedure Code, and has obtained a Rule on the opposite party to show cause why the order of the District Judge should not be set aside on the ground that it was passed without jurisdiction.

It is clear that under section 588 of the Civil Procedure Code, an order passed under section 295 of the Civil Procedure Code is not ordinarily appealable; but it is argued on behalf of the opposite party that such an order comes within the scope of section 244 and is therefore open to appeal. Reference has been made to the case of *Prosunno Kumar Sanyal v. Kali Das Sanyal* (2), in which it was laid down that section 244 should be construed with liberality and that a question, which concerned an auction purchaser at an execution sale, was none the less a question coming within that section.

We cannot regard this case as an authority for holding the opposite party in this case, who is a decree-holder under a totally distinct decree, to be a party to the suit, in which the

(1) (1903) I. L. R. 30 Calc. 583.

(2) (1892) I. L. R. 19 Calc. 683;  
 L. R. 19 I. A. 166.

petitioner's decree was passed and entitled therefore to appeal by section 244 of the Code. We think that the order cannot possibly come within the scope of section 244 of the Civil Procedure Code; and that therefore no appeal lay to the District Judge.

1908

JAGADISH  
CHANDRA  
SHAH  
v.  
KRIPA NATH  
SHAH.

Secondly it is argued on behalf of the opposite party that, although no appeal lay to the District Judge, yet this Court should not set aside his order in the exercise of the discretion vested in it by section 622 of the Civil Procedure Code.

The learned pleader for the opposite party has not, however, been able to show us any case in this Court in which it refused to interfere with an order, which was passed wholly without jurisdiction. By the order of the Munsiff the petitioner obtained a right to execute his decree free from the interference of the opposite party. The order giving him this right may, or may not, have been just, but it cannot be set aside except in accordance with the law. The case of *Ramasamy Chettiar v. R. G. Orr* (1) is an authority for holding that in cases like the present the High Court is bound to interfere, and although in *Dayaram Jagjivan v. Govardhandas Dayaram* (2) the learned Judges refused to interfere under section 622 with an order passed without jurisdiction, yet their refusal was based on such special circumstances, as to be no authority to justify us in refusing to exercise the power, which section 622 gives us in a case like the present.

The result is that the Rule is made absolute and the order of the District Judge, dated the 16th May 1908, is set aside.

*Rule absolute.*

S. M.

(1) (1902) I. L. R. 26 Mad. 176.

(2) (1894) I. L. R. 28 Bom. 458.