

Anandi Kunwar Vs. Ram Niranjana Das and anr.

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SooperKanoon Citation : sooperkanoon.com/451638

Court : Allahabad

Decided On : Mar-13-1918

Reported in : (1918)ILR40All505; 45Ind.Cas.494

Judge : Henry Richards, C.J. and ;Pramada Charan Banerji, J.

Appellant : Anandi Kunwar

Respondent : Ram Niranjana Das and anr.

Judgement :

Henry Richards, C.J. and Pramada Charan Banerji, J.

1. This appeal arises out of a suit in which the plaintiff sought a declaration that certain property was not saleable in execution of a certain decree. It appears that the principal defendants had a decree against the plaintiff's husband. In execution of that decree they attached certain property alleging it to be the property of their judgment-debtor. The decree was for about Rs. 2,000. The plaintiff in the present suit objected to the attachment. The objection was overruled, and the plaintiff had to bring the present suit. The court of first instance held that the property was the property of the judgment-debtor and dismissed the plaintiff's suit. The plaintiff has now preferred this second appeal. The first and main objection urged is that the District Judge had no jurisdiction to hear the appeal because the value of the property was over Rs. 5,000. This objection does not come very well from the plaintiff, considering that it was she herself who preferred the appeal to the District

Judge. If the argument held good it would mean that the judgment of the court of first instance had become final, and the probabilities are that no court would allow an appeal now to be presented from the judgment of the first court. We think, however, that the value of the Subject matter of the suit and the appeal was below Rs. 5,000 What the plaintiff claimed was a declaration that the property was not saleable in execution of the decree, that is, for the realization of the amount of the decree. The defendants were only concerned to the extent of the amount due under their decree. They did not care whether the plaintiff could keep the property after their decree had been satisfied. This very point was decided in the case of *Khetra Pal v. Mumtaz Begam* (1). We have been referred by Mr. Upadhyaya to the case of *Radha Kunwar v. Reoti Singh* (2). This ruling, it seems to us, supports the view that we take in the present case. There it was held that, though the mortgage decree which was sought to be satisfied, was far above Rs. 10,000, the value of the property to the decree-holder and to the judgment-debtor was below Rs. 2,000 and their Lordships of the Privy Council held that this must be taken to be the value of the subject-matter of the appeal. We consider that the appeal lay to the District Judge. It was for that court to decide questions of fact, and we think that the findings arrived at conclude the present appeal. It is accordingly dismissed with costs.