

**Mumtaz Begam Vs. Khetra and**

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**SooperKanoon Citation :** [sooperkanoon.com/459884](http://sooperkanoon.com/459884)

**Court :** Allahabad

**Decided On :** Nov-22-1915

**Reported in :** (1916)ILR39All72

**Judge :** Pramada Charan Banerji and; Tudball, JJ.

**Appellant :** Mumtaz Begam

**Respondent :** Khetra And; Inam Ali Khan

**Judgement :**

**Pramada Charan Banerji and Tudball, JJ.**

1. The first question which arises in this appeal is whether the appeal lies to this Court. For the decision of that question we have to determine what was the value of the subject matter of the suit in the court below. If the amount of that value was below Rs. 5,000, the appeal would not lie to this Court but lay to the court of the District Judge. The suit was brought under the following circumstances. The first defendant, who is the appellant here, holds a decree against the second defendant, the husband of the plaintiff respondent. In execution of that decree he caused the property in suit to be attached as the property of his judgement-debtor. An objection was preferred by the plaintiff claiming the property under a sale deed alleged to have been executed in her favour on the 22nd of May, 1912. Her objection having been overruled, she brought the present suit on the 4th of January, 1913, and asked for a declaration that the property in suit 'was not liable

to attachment and sale in satisfaction of the amount due to defendant No. 1,' and she also prayed that her right to the property be declared. She alleged the date of the cause of action to be the 4th of January, 1913. No doubt she made her husband a party to the suit, but she asked for no relief against him and did not allege any cause of action which would entitle her to sue him. Apparently her husband was only made a formal defendant to the suit. The lower court decreed her claim and the decree-holder, the defendant No. 1, has preferred this appeal. No doubt in the plaint the value of the subject matter for purposes of jurisdiction is stated to be Rs. 25,000, but this in our opinion was clearly erroneous. As we have already said, the plaintiff claims no relief against her husband and she does not allege any cause of action as against him, All that she asks for is that it be declared that the amount of the decree held by the first defendant ought not to; be realized from her property, that is, from so much of it the value of which would be equivalent to the amount of the decree. It is admitted in this case that the amount of the decree is about Rs. 2,000. It is therefore clear that the object of the suit is to relieve the property from a burden to the amount of Rs. 2,000 which the decree-holder, defendant No. 1, is seeking to impose on it by attaching the property. The whole of the property is not in dispute, and under the attachment and the sale which might take place in pursuance of it, the whole property cannot be sold, but only so much of it as will be sufficient for the realization of the amount of the decree. Therefore, the value of the subject matter of the suit is the amount of the decree and not the amount of the actual value of the property or the value for which the plaintiff alleges that she purchased it. The point was decided by this Court in the case of Dwarka Das v. Kameshar Prasad (1894) I.L.R. 17 All. 69 and the same view was adopted in Dhan Devi v. Zamurrad Begam (1905) I.L.R. 27 All. 440. The matter was considered by their Lordships of the Privy Council in the recent case of Phul Kumari v. Ghanshyam Misra (1907) I.L.R. 35 Calc. 202. The exact point which is now before, us was not in issue before their Lordships, but there are observations in the Judgment which clearly support the view taken by this Court. Their Lordships say, 'the value of the action must mean the value to the plaintiff. But the value of the property might quite well be Rs. 1,000 while the execution debt was Rs. 10,000. It is only if the execution debt is less than the value of the property that its amount affects the value of the suit.' In the case

before us the amount of the decree is below Rs. 5,000 and much below the actual value of the property. Therefore, according to the view expressed by their Lordships, the Value of; the suit should be regarded as the amount of the decree. That amount being less than Rs. 5,000, an appeal from the decree of the court below lay to the District Judge and not to this Court. We accordingly direct that the memorandum of appeal be returned to the appellant for presentation to the proper court. Under the circumstances we make no order as to the costs of this appeal.

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