
(1895) 07 AHC CK 0011
In the Allahabad High Court

Hurmat-un-Nissa

APPELLANT

Vs

Mukarrab Husain and Another

RESPONDENT

Date of Decision : 29-07-1895

Acts Referred:

Citation : (1896) ILR (All) 52

Hon'ble Judges : Banerji, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Banerji, J.—The preliminary objection that no appeal lies in this case must prevail. The facts are these: The respondent brought a suit for dower against Syed Ashraf Ali. Ashraf Ali, it is alleged, had made a gift of some property in favour of the present appellants, and the present appellants were made parties to that suit. As against them the plaintiff's prayer was that the gift should be set aside. That prayer was disallowed on the ground that, as there was no claim against any property of Ashraf Ali, but the claim for dower was only a personal claim against him, the plaintiff had no cause of action against the present appellants. The decree was made only against Ashraf Ali. In execution of that decree the decree-holder, respondent, caused certain property to be attached as the property of Ashraf Ali. In respect of that property the present appellants filed objections disputing the decree-holder's right to bring that property to sale and claiming it as their own under the gift referred to above. The Court below has disallowed the appellants' objections. If the appellants can be regarded as parties to the suit within the meaning of Clause (c) of Section 244 of the Code of Civil Procedure, an appeal, no doubt, lies; but if on the other hand they are to be treated as strangers, their objection to the attachment of the property in question was an objection u/s 278 of the Code of Civil Procedure, and their only remedy was a suit u/s 283, and they have no right of appeal.

2. I am of opinion that the appellants cannot be held to be parties to the suit within the meaning of Clause (c) of Section 244. They were no doubt originally

made parties, but they were released from liability for the decree. There is no decree as against them, and consequently no question as between them and the decree-holder relating to the execution of the decree. They are not parties to the execution proceedings, and indeed there is no decretal order in respect of which the decree-holder by execution could claim any relief as against them. So far, therefore, as the property now sought to be attached is concerned, they are in the position of strangers and not of parties to the suit, and the question which arose between them and the decree-holder was not a question within Section 244, Clause (c). This view is supported by the ruling in *Jangi Nath v. Phundo* ILR 11 All. 74 the principle of which applies to this case. In fact this is a much stronger case than that of *Jangi Nath v. Phundo*. As no appeal lay, this appeal is dismissed with costs.