

1868.
March 26.

Civil Petition.

NARBHERA'M KISANRA'S *et al.* *Petitioners.*

NAVNIDRA'M KA'SHIRA'M *Opponent.*

Execution of Decree—Jurisdiction—Senior Assistant Judge—Appeal.

Held that a Senior Assistant Judge is not competent to hear an appeal from an order made in the execution of a decree in a case in which he is not competent to hear an appeal from the decree itself.

THIS was an application to set aside an order made by S. H. Phillpotts, Acting Senior Assistant Judge at Broach, on the 11th of September 1867, in the matter of the execution of a decree.

The petitioners and the opponent jointly obtained a decree in the court of the Şadr Amín of Broach for Rs. 9,425 and costs against Fattesangji Jasvantsangji.

In execution of this decree a sum of Rs. 10,593-5-3 was paid by the defendant Fattesangji, and this amount was deposited in court.

As the other co-plaintiffs would not join the opponent, Navnidrá, in taking the money out of court, the latter applied to the Şadr Amín for his one-third share of the money, or to be paid the entire amount on his furnishing security to repay what might be paid to him in excess of his share.

The Şadr Amín, under date the 9th of July 1867, rejected this application, on the ground that all the plaintiffs who applied for the decree should join in taking out the money, as there was no order in the decree for paying it in separate shares.

Against this order the opponent, Navnidrá, appealed to the Senior Assistant Judge at Broach. It was objected before the Senior Assistant Judge that he had no jurisdiction to entertain the appeal; but he overruled this objection, on the ground that the opponent, Navnidrá, desired in appeal to get Rs. 3,531-1-9 only, being his one-third share of the amount of the decree; that although he had sought in the lower court to get the whole of the amount recovered under the decree, yet the amount in dispute in appeal was

under Rs. 5,000 ; that, therefore, he must be presumed to have given up the other part of the money, and that, consequently, under Sec. 7 of Act VIII. of 1859, the court had jurisdiction to hear the appeal. He directed that one-third of the money deposited should be paid to the opponent, Navnidrá'm, as his share.

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 NARBHERA'M
 KISANDA'S
et. al.
 v.
 NAVNIDRÁ'M
 KA'SHIRA'M.

The case was heard before NEWTON, Acting C.J., and TUCKER, J.

Shántáram Náráyan, for the petitioners:—An appeal in this case does not lie to the Senior Assistant Judge, but to the Judge of the District. By Cl. 5 of Sec. xxviii. of Reg. II. of 1827, the Original jurisdiction of a Senior Assistant Judge is limited to five thousand rupees; and Sec. 4 of Reg. I. of 1830 provides that the jurisdiction of a Senior Assistant Judge, in cases of appeals from the decision of a Native Commissioner, shall not exceed five thousand rupees. In this case the original claim was for more than nine thousand rupees, and the whole amount was recovered under the decree. There can be no distinction between appeals in regular suits and in miscellaneous matters.

Nánábhái Haridás, for the opponent, Navnidrá'm:—The Senior Assistant Judge had jurisdiction to hear this appeal, since the matter of the appeal, and what was ordered to be paid to Navnidrá'm, was his one-third share only, and the decree, as far as he was concerned, was not capable of being executed to a larger extent.

PER CURIAM:—We are of opinion that the order passed by the Senior Assistant Judge, under date the 11th of September 1867, has been made without jurisdiction. The decree itself was not appealable to his court, and consequently his was not the court to which an appeal from any order passed in execution of that decree should have been made.

The pecuniary value of the particular matter decided by the order in execution is immaterial. The value of the original suit should have determined the court to which the appeal would lie, which in this case was the court of the District Judge of Súrat.

Order reversed.