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fusion might follow if any other Court were to assume the power of deciding whether or not the assignee should be allowed to enforce the decree, as, were that the case, there might be presented the anomaly of the Court which made the decree enforcing it in the name of the original plaintiff, and another Court enforcing it on behalf and in the name of the assignee. This Court concurs on this point, in the decision of Bayley and Markby, JJ., in *Sheo Narayan Sing* v. *Harbans Lall* (*d*), that the assignee of a decree should apply to the Court which pronounced the decree for leave under Section 208 to have his name substituted in lieu of that of the plaintiff. But this Court declines to express any opinion as to there being an *unlimited* discretion on the part of the Court which makes the decree to permit or refuse the application of an assignee for such substitution.

This petition of appeal must (without this Court entering into the merits of the case) stand dismissed with costs.

Appeal dismissed.

[APPELLATE CIVIL JURISDICTION.]

Miscellaneous Special Appeal No. 26 *of* 1871.

Jan. 17.

FRA'MJI RUSTAMJI .....*Appellant.*

RATANSHA' PESTANJI and another.....*Respondents.*

Procedure—Order recognizing assignment of Decree—Final Order—Appeal—Assignee of Decree—Application for Execution.

An order made by a Court recognizing a person as the assignee of a decree is a final order from which a regular appeal may be preferred.

A person claiming to be the assignee of a decree must apply for recognition of his title to the Court which passed the decree, and not to a Court to which such decree has been transmitted for execution.

THIS application was filed as a miscellaneous special appeal from an order of W. H. Newnham, Judge of the District of Súrat, rejecting an appeal from an order made by the First Class Subordinate Judge of Súrat. The matter was subsequently treated as a regular appeal.

(*d*) 5 Beng. L. Rep. 497.

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An award between Bái Jáiji and Frámji Rustamji in favor of the former, bearing date the 30th August 1867, was registered on the 23rd of October 1867 in the Court of the Principal Ṣadr Amín of Ahmadabad. Bái Jáiji, treating the award so registered as a decree, got it transferred to the Court of the Principal Ṣadr Amín of Súrat for execution, for which he applied on the 13th of November following. The Súrat Court accordingly levied an attachment upon the defendant's property. Whilst the property was under attachment, Bái Jáiji assigned his interest in the award to Ratanshá Pestanji and Nasarvánji Pestanji. The attachment was subsequently removed (the reasons for its removal did not appear), and the assignees on the 29th August 1870 applied to the Court of the First Class Subordinate Judge of Súrat, which had succeeded to the Court of the Principal Ṣadr Amín, for execution. That Court, after making an inquiry into the genuineness of the assignment, on the 15th of February 1871 made an order recognizing the assignment, and issued a notice to the defendant calling upon him to show cause on the 4th of April following why execution should not proceed. The defendant did not appear as called upon, and the Subordinate Judge ordered the execution to be issued.

From this order Frámji Rustamji preferred an appeal to the District Judge, who on the 18th of July 1871 held that the amount in litigation between the parties being more than Rs. 5,000, no appeal lay to him under Section 26 of the Bombay Civil Court's Act.

On the 24th July 1871 the defendant, Frámji, preferred a memorandum of special appeal to the High Court, which was registered the following day.

On the 18th of December 1871, the case was set down for hearing before MELVILL and KEMBALL, JJ.

Shántárám Náráyan, for the appellant.

Nánábhái Haridás, for the respondents.

Nánábhái Haridás objected to the appeal being heard on the following grounds:—

I.—If this application is in the nature of a regular appeal, no regular appeal lies, as the order appealed against was passed *ex parte*, and the only course for the appellant to pursue is that laid down in Section 119 of the Code of Civil Procedure.

II.—If an appeal does lie, it is beyond time, as it was presented on the 24th July 1871, and the orders appealed against were made on the 15th February and 4th April 1871.

III.—No appeal lies to this Court.

Shántárám Náráyan :—The appeal is not from an *ex parte* decree. Our object in appealing was to set aside the recognition of the respondents as assignees.

PER CURIAM :—If an appeal lies at all, it lies to this Court, and Mr. Nánábhái will be heard as to whether an appeal lies, and, if so, whether the assignee of a decree is bound to apply to the Court which passed the decree, or to the Court to which such decree has been transferred.

17th January 1872. *Nánábhái Haridás* :—No regular appeal lies. The order of the Subordinate Judge recognizing the assignment was merely an interlocutory order from which no appeal can be preferred; and against the order of the 4th of April, by which execution was allowed to proceed, there can be no appeal, as the defendant, though he had notice to appear, failed to do so.

Shántárám Náráyan :—The order of the Subordinate Judge of the 15th February was final, because it finally decided that the assignees should be recognized. Till this day every thing was unknown to the defendant. On the 15th a notice is issued to him, simply because it happened that the decree had been passed more than a year ago. If an assignment be recognized in this way, it might happen that a satisfied decree might be assigned and the judgment debtor would have to lie by and allow himself to be harassed by proceedings taken by the assignee. According to *Sheo Narayan Sing* v. *Harbans Lall* (*a*) the assignee must apply to the Court passing the decree.

(*a*) 5 Beng. L. Rep. 497.

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PER CURIAM:—When this case was last before us we decided that an appeal in this matter, if it lies at all, lies to this Court under the provisions of Section 294 of the Code. The decree, if such there were, was transferred to the Court of a Subordinate Judge, First Class, and appeals from his decrees in suits of a value above Rs. 5,000 lie to this Court.

It has been argued that there is no appeal against the Subordinate Judge's order of 15th February, because it is merely an interlocutory order; but it appears to us that, so far as it recognized the respondents as lawful holders of the decree, it was a final order. It was an order passed after judicial inquiry, though in the absence of the appellant; and it was merely owing to the accident that more than a year had elapsed since the passing of the decree that any notice to show cause was served on the appellant and that execution did not immediately issue. If an order for execution had been made, the present appellant would have had a right to appeal on the ground that the assignee had no *locus standi* in the Court issuing the process, and that the orders had been made without jurisdiction; and we think that he has the same right under the circumstances of the present case.

As regards the merits of the appeal, we are of opinion that the view taken by the Calcutta High Court in *Sheo Narayan Sing* v. *Harbans Lall* (*b*) is correct, and that an assignee of a decree must apply to the Court which passed the decree, and not to the Court to which the decree has been transferred for execution. Under this view the order of the First Class Subordinate Judge of Súrat, dated 15th February 1871, as well as the subsequent order of the 4th April, must be annulled as having been made without jurisdiction.

We do not decide whether there has been any thing like a valid decree, or merely an award which requires a decree to make it capable of execution.

Order annulled with costs on the respondents.

(*b*) 5 Beng. L. Rep. 497.