

[APPELLATE CIVIL JURISDICTION.]

*Miscellaneous Special Appeal No. 2 of 1875.*1875.
September 8.

KHUSA'LDAS by his Agent ANANT BA'BURA'V.....	}	<i>Appellant.</i>
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SAKHA'RAM RA'MCHANDRA DIKSHIT.....*Respondent.*

The Code of Civil Procedure, Sections 284-5—Decree against a 3rd class Sirdár—Execution against his son.

Under the authority of Section 284 *et seq.* the Court of the Agent for Sirdárs, not having jurisdiction over a Sirdár's son who is not himself a Sirdár, cannot transfer a decree passed against the Sirdár to a Civil Court for execution against the son. To obtain enforcement, in such a case, against his heir of a decree against the Sirdár, the decree-holder may file a suit in the ordinary Civil Court on his decree.

THIS was a miscellaneous special appeal from the decision of Edward Cordeaux, Assistant Judge of the District of Poona, reversing an order of the Subordinate Judge of Poona.

The facts of the case are shortly these:—The special appellant obtained a decree in the Court of the Assistant Agent for Sirdárs in the Deccan against the grandfather and father of the special respondent, both of whom were sirdárs of the 3rd class. After their death the decree-holder obtained a certificate, under Section 285 of the Civil Procedure Code, from the Assistant Agent's Court, and sought to attach, through the Court of the Subordinate Judge at Poona in execution of his decree, certain property which was in the possession of the respondent as heir of the judgment debtors. The respondent, however, was not himself a sirdár.

The special respondent objected to the execution on the ground, among others, that the Agent's Court had no jurisdiction over him, as he was not a sirdár, and that, therefore,

the decree could not be executed by the 1st Class Subordinate Judge. This objection was overruled, and the execution was directed to proceed; but on appeal the Assistant Judge held that the order of the Subordinate Judge was without jurisdiction. On the authority of the interpretation of the Bombay Government on Sections 3, 4, and 5, of Regulation XXIX. of 1827 *in re Sadáshiv Rámchandra*, 15th December 1834, and of a resolution of the Sadr Diváni Adálat, 21st December 1853, *in re Yeshwantrav Parlikar*, the Assistant Judge held that the decree of the Agent's Court could not be executed by the Subordinate Judge's Court. He was of opinion that Section 284 of Civil Procedure Code, and the following sections which refer to execution matter, relate to the cases in which the Court, which passed the decree, would have jurisdiction to execute it.

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DRA DIRSHI

The special appeal was heard by KEMBALL and NA'NA'BHA'I HARIDA'S, JJ., 17th August 1875.

Máhádev Chimáji Apte for the special appellant—Section 284 of the Code seems to have been enacted specially to meet such a case as the present. [KEMBALL, J.:—Can you cite any case in support of your contention and showing the practice of the Court of the Agent for Sirdárs in executing decrees?] No; I cannot now.

There was no appearance on behalf of the special respondent, and the case was at this stage adjourned to allow of the pleader for the special appellant searching for authorities in support of his contention. On the case being again called on for hearing on 8th September 1875 he admitted that he had been unable to find any.

Per Curiam.—The Assistant Agent for Sirdárs could not transfer the decree of his Court to that of the 1st Class Subordinate Judge, and, therefore, the latter Court could not execute it; but the decree-holder may file a suit in the Civil Court on this decree against the heir.

Order confirmed.