

*Privy Council Appeal No. 45 of 1913.*

*Bengal Appeal No. 24 of 1910.*

**Amir Chand** - - - - - *Appellant,*  
v.  
**Bakshi Harihar Prashad Singh and others** - *Respondents.*

FROM

**THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 25TH NOVEMBER 1915.

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*Present at the Hearing:*

VISCOUNT HALDANE.	LORD WRENBERY.
LORD PARMOOR.	SIR JOHN EDGE.
MR. AMEER ALI.	

*Delivered by* SIR JOHN EDGE.

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The plaintiff in the suit in which this appeal has arisen is Babu Amir Chand, the adopted son and representative of Babu Fakir Chand, deceased. On the 29th March 1888 one Bakshi Ram Newaz Singh obtained a decree for sale, under Section 88 of the Transfer of Property Act, 1882, Act IV. of 1882, of certain immovable property of which he was a mortgagee. To the suit in which that decree was made Babu Fakir Chand was a defendant. An order absolute for sale, under Section 89 of that Code, was made in the suit for sale on the 4th January 1902 by the Trial Judge, and was confirmed on appeal by the High Court at Calcutta on the 18th December 1903. The representatives of Bakshi Ram Newaz Singh thereupon applied for execution of the decree for sale. On the 18th May 1904 Babu Amir Chand, who was the representative of Babu Fakir Chand

then dead, presented to the Court executing the decree for sale a petition of objections under Section 244 of the Code of Civil Procedure, 1882, Act XIV. of 1882. Some of Babu Amir Chand's objections were allowed, others of his objections were disallowed on the ground, amongst others, that he had failed to support them by sufficient evidence.

On the 23rd January 1907 Babu Amir Chand filed his plaint in the present suit in the Court of the Subordinate Judge of Arrah. In this suit he raises the same objections to the execution of the decree for sale of 1888 which had been put forward in his petition of objections of 1904 and which had been disallowed. The Subordinate Judge decreed in part the claims of Babu Amir Chand. On appeal the High Court at Calcutta on the 20th December 1909, holding that this suit is based on the very same objections that were made by Babu Amir Chand in his petition of objections of 1904, and further, finding that Babu Amir Chand had laid no foundation by reliable legal evidence for impleading in this suit Abdur Razak and Gangan Kunwar, who were not parties to the previous suit or execution proceedings, dismissed this suit. From that decree of the High Court this appeal has been brought.

Abdur Razak and Gangan Kunwar were made defendants to this suit in an attempt to avoid the bar to this separate suit which was provided by Section 244 of the Code of Civil Procedure, 1882.

As was observed by this Board in *Prosunno Coomar Sanyal v. Kasi Das Sanyal* (19 I. A. 166):—

“ It is of the utmost importance that all objections to execution sales should be disposed of as cheaply and as speedily as possible. Their Lordships are glad to find that the Courts in India have not placed any narrow

“ construction on the language of Section 244 of the Code  
“ of Civil Procedure, 1882.”

The questions raised in this suit could have been and were raised by Babu Amir Chand under Section 244 of the Code of Civil Procedure, 1882, and whether then raised or not in his petition of objections of 1904, they are questions which relate to the matters which by Section 244 it was enacted—

“ Shall be determined by orders of the Court executing  
“ a decree and not by separate suit.”

The suit was properly dismissed by the High Court. The respondents, with one exception, have not entered an appearance in this appeal.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed.

The appellant must pay to the respondent who has entered an appearance such costs as he may be entitled to.

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In the Privy Council.

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AMIR CHAND

v.

BAKSHI HARIHAR PRASHAD SINGH  
AND OTHERS.

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DELIVERED BY SIR JOHN EDGE.

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