

KARUTHAN
v.
SUBRAMANYA.

long as the relation of master and servant continues between the company and the servant.

We are of opinion that this is so, and that it is not therefore open to a Court executing a decree against a person so employed to order sale of the deposit or to direct that it be paid over to the judgment-creditor. But we see nothing to prevent an attachment being placed thereon at the instance of the judgment-creditor; indeed this appears to be a case to which the provisions of ss. 266 and 268 of the Code clearly apply.

The deposit is movable property belonging to the judgment-debtor subject to the lien of the company; on termination of the contract of service the judgment-debtor is entitled to its return, provided that the company has no right under the terms of the contract under which it is deposited to retain the whole or a portion of it, and s. 268 provides for attachment of such property not in the possession of the judgment-debtor by a written order prohibiting the person in possession of the same from giving it over to the judgment-debtor. We answer the question then as follows: the Court may place an attachment on such deposits, subject to the lien of the company, but cannot proceed to order the sale thereof until the deposit is at the disposal of the judgment-debtor free from the lien of the company, and if the deposit carries interest, and the interest is not, under the terms of the contract between the employer and the employé, at the disposal of the employer, order may be made for payment to the judgment-creditor of the interest as it from time to time falls due.

APPELLATE CIVIL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Hutchins.

MAHOMED KOYA (PLAINTIFF), APPELLANT,
and

KASMI AND OTHERS (DEFENDANTS), RESPONDENTS.*

Small Cause Court Act XI of 1865—Jurisdiction—Suit to declare movable property not liable to attachment—Civil Procedure Code, s. 283.

Certain movable property having been attached in execution of a Small Cause decree passed by the Court of a Subordinate Judge, a claim thereto was preferred

* Appeal against Order 122 of 1885.

by M and rejected. M then brought a suit in the District Múnsif's Court for a declaration that the property was his and was not liable to be sold in execution.

MAHOMED
KOYA
?.
KASMI.

The suit was dismissed on the ground that it was cognizable by a Court of Small Causes :

Held, that M was not bound to sue for recovery of the property and that the suit was not cognizable by a Small Cause Court constituted under Act XI of 1865.

THIS was an appeal against an order of W. P. Austin, District Judge of North Malabar, reversing the decree of A. C. Kannan Nambiar, District Múnsif of Kawai, in suit 39 of 1884, and returning the plaint.

The plaintiff, Nalupurappattil Madathil Syed Mahomed Koya Thangal, sued to obtain a declaration that 5,205 seers of paddy attached by the defendants Nos. 1 and 2, Anakaran Kasmi and his brother, in execution of a Small Cause decree, obtained in the Court of the Subordinate Judge of North Malabar, were not liable to be sold in execution of that decree.

Defendants Nos. 1 and 2 pleaded that the Court had no jurisdiction to entertain the suit, because the value of the paddy was less than Rupees 500, the limit of the Small Cause Jurisdiction of the Subordinate Judge.

The District Múnsif held that the suit, which had been brought according to the provisions of s. 233 of the Code of Civil Procedure, was not cognizable by a Small Cause Court, and referred to *Ilahi Bakhsh v. Sita*(1) and *K. I. Narainan v. K. I. Nilakandan Nambudri*.(2) He decreed the claim.

On appeal, the District Court, referring to *Janakiammal v. Vithenadien*,(3) *K. N. Booshe Naidoo v. R. Lutchmeepaty Naidoo*,(4) *Nathu Ganesh v. Kálidás Umed*,(5) and *Gordhan Penna v. Kasandás Balmukundás*,(6) held that the suit ought to have been brought in the Small Cause Court, and, reversing the decree of the Múnsif, directed the plaint to be returned to the plaintiff.

Mr. Wedderburn for appellant.

The Acting Advocate-General (Hon. Mr. Shephard) for the respondents.

The Court (Muttusámi Ayyar and Hutchins, JJ.) delivered the following

(1) I.L.R., 5 All., 462.

(2) I.L.R., 4 Mad., 131.

(3) 5 M.H.C.R., 191.

(4) 8 M.H.C.R., 36.

(5) I.L.R., 2 Bom., 365.

(6) I.L.R., 3 Bom., 170.

MAHOMED
KOYA
v.
KASMI.

JUDGMENT:—The plaintiff's movable property had been attached in execution of a decree against the defendant No. 3, and his claim having been disallowed, he brought this suit to establish his right. The relief asked is a declaration that the property is not liable to be sold for the judgment-debt of defendant No. 3. The District Munsif granted the declaration prayed for, but the District Judge has held in appeal that the suit, being one for personal property, ought to have been instituted in the Court of Small Causes.

A Small Cause Court is not entitled to make a declaration, and the District Judge's order cannot be supported on the ground upon which it has been put. On behalf of the respondent it has been contended that the appellant was dispossessed by the attachment, and, therefore, could not ask for a declaration without also seeking recovery of the property; if he had sought recovery of the property there is no doubt that the suit would be cognizable by a Court of Small Causes. But we do not think he was bound to sue for possession. Section 283 permits him simply to establish his right. The property is not in the possession of any private person, and he could not sue the Court which attached it. It is probable that, in framing s. 283 of the Code of Civil Procedure, the Legislature bore in mind that, if a suit for possession was required, the owner of property might be put to heavy expense in the way of institution fees upon his property being wrongly attached.

The decree of the District Judge is reversed, and the appeal remanded for disposal on the merits. The costs of this appeal will be paid by the respondent.

APPELLATE CIVIL.

Before Mr. Justice Kernan and Mr. Justice Muttusami Ayyar.

CHANDU (PLAINTIFF), APPELLANT,

and

KOMBI (DEFENDANT NO. 1), RESPONDENT.*

Jurisdiction—Civil Courts' Act (Madras)—Court Fees Act, s. 7, cl. 9—Ejectment—Mortgage set up by defendant exceeding limit of jurisdiction.

In a suit brought in a District Munsif's Court to recover several parcels of land from the defendant, plaintiff alleged that defendant held a valid mortgage of

* Appeal against Order 62 of 1885.

1885.
September 18.
1886.
January 6.