QUEEN-EMPRESS v. SHAIK IBRAHIM.

We are clearly of opinion that the Principal Assistant Magistrate was right in reversing the conviction: the front or outer door of a house is not movable property, and is, therefore, not liable to be distrained. The terms immovable and movable property have been defined in various Acts of the Indian Legislature (General Clauses Act I of 1868, section 2 (5) and (6), Indian Penal Code, section 22, and Indian Registration Act III of 1877, section 3); the definitions thus given render it clear that that which is attached to the earth is not movable property, and the words attached to the earth have been interpreted by the Legislature itself to mean attached to what is imbedded in the earth for the permanent beneficial enjoyment of that to which it is attached, Transfer of Property Act, section 3 (*c*). Moreover by the Transfer of Property Act (IV of 1882), section 8, it is enacted that when the property is a house, the transfer thereof includes, *inter alia*, the doors.

It has been held in *Peru Bepari* v. *Ronuo Maifarash*(1) that the doors of a building form part of an immovable property. We are, therefore, of opinion that the conviction was wrong and that the doors of a house cannot be distrained under the first portion of clause (1) of section 103 of the Madras Act IV of 1884.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Shephard.

1890. July 24, 28.

KALIMA (DEFENDANT NO. 1), APPELLANT IN APPEAL NO. 28 OF 1888,

MAHOMED (DEFENDANT NO. 7), APPELLANT IN APPEAL NO. 66 OF 1888,

v.

NAINAN KUTTI (PLAINTIFF), RESPONDENT IN BOTH CASES.*

Civil Procedure Code—Act XIV of 1882, *s.* 331—*Appeal—Jurisdiction—Civil Courts Act* (*Madras*)—*Act III of* 1873, *s.* 13.

The plaintiff being the holder of a decree of a Subordinate Court for more than Rs. 5,000 was obstructed in execution by the present defendants. He applied to

(1) I.L.R., 11 Cal., 164.

* Appeals Nos. 28 and 66 of 1888.

the Court for the removal of the obstruction, the property, which was the subject of the application, being valued at less than Rs. 5,000, and the Subordinate Judge directed that the application be registered as a regular suit under Civil Procedure Code, s. 331, and ultimately passed a decree in favor of the plaintiff:

Held, that the appeal against this decree did not lie to the High Court.

APPEALS against the decree of E. K. Krishnan, Subordinate Judge of South Malabar, in original suit No. 77 of 1885.

The facts of the case appear sufficiently for the purposes of this report from the judgments of the High Court.

Mr. *Gover* for appellant in appeal No. 289 of 1888.

Sankara Menon and *Narayana Rau* for respondent.

Sundara Ayyar for appellant in appeal No. 66 of 1888.

Narayana Rau and *Ryru Nambiar* for respondent.

SHEPHARD, J.—A preliminary objection was taken by Mr. Sankara Menon on behalf of the respondent that no appeal lay to this Court, because the value of the subject-matter of the suit was less than Rs. 5,000, and, therefore, the appeal ought to have been instituted in the District Court.

It appears from the schedules attached to the petition in which the suit originated that the whole property, in respect of which obstruction to execution was complained of, was valued at Rs. 4,549-3-6, of which property the plaintiff claims two-sevenths, that share being valued at Rs. 1,299-12-5. Whether we take the value of the entire property or the value of the plaintiff's share, the value of the subject-matter is therefore below Rs. 5,000. Our attention, however, has been called to two cases which lend some support to the contention that the appeal was nevertheless rightly instituted in this Court and not in the District Court, the subject-matter of the original suit having exceeded Rs. 5,000 in value. In *Ravloji Tamaji* v. *Dholapa Raghu*(1) the same point arose with reference to a section of the Bombay Civil Courts Act similar to that in the Madras Act and to the Code of Civil Procedure of 1859. It was decided that, although the property attached was worth less than Rs. 5,000, the District Judge had rightly held that an appeal from the decision of the Subordinate Judge who had passed the decree in the original suit did not lie to him. In *Sithalakshmi* v. *Vythilinga*(2) the point decided was that in a claim arising in execution of the decree of a Subordinate Judge, that Judge had jurisdiction to try it notwithstanding that the subject-

(1) I.L.R., 4 Bom., 123. (2) I.L.R., 8 Mad., 548.

KALIMA v. NAINAN KUTTI.

matter of the claim was less than Rs. 2,500 in value. In the judgment of the majority of the Court in this case the decision in the Bombay case is approved and some doubt is thrown on the judgment in an earlier Madras case, *Muttammal* v. *Chinnana Gounden*(1). For the purposes of the case before the Court, it was not, however, necessary to consider the position laid down in *Muttammal* v. *Chinnana Gounden*(1), viz., that by section 229 of the Code of 1859, a special jurisdiction was given only in those cases in which the value of the property claimed is not at the date of the claim in excess of the ordinary power or the pecuniary limit of the jurisdiction of the Court that passed the decree. If it were necessary to consider that proposition in the present case, I should be disposed to agree with the reasoning of Muttusami Ayyar, J., in his two judgments in *Muttammal* v. *Chinnana Gounden*(1) and *Sithalakshmi* v. *Vythilinga*(2). But, accepting the reasoning of the majority of the Court in *Sithalakshmi* v. *Vythilinga*(2) as to the object of the Legislature in enacting the provisions of the Code with respect to claims of property attached in execution of decrees, I fail to understand how it follows that the rules as to appeal from the decision of a Court upon a claim must differ from the rules governing appeals from decrees in ordinary suits. I can see no reason why any special character should attach to the suit instituted under section 331 of the Code of Civil Procedure after it has once been disposed of and a decree has been passed on it. And in the last clause of that section it is expressly provided that the order having the same force as a decree shall be subject to the same conditions as to appeals or otherwise. The similar provision in section 229 of the Code of 1859 is not noticed in the judgment of the Bombay High Court.

I am of opinion that the amount now in dispute being under Rs. 5,000, although the subject-matter of the original suit exceeded that amount, the appeals do not lie to this Court. The petitions of appeal must, therefore, be returned to be presented to the proper Court and the appellants must pay the respondent's costs.

MUTTUSAMI AYYAR, J.—I am also of opinion that the appeal lies to the District Court and not to the High Court. The subject-matter of the respondent's claim, so far as it was investigated under section 331 of the Code of Civil Procedure, was

(1) I.L.R., 4 Mad., 220. (2) I.L.R., 8 Mad., 548.

valued at Rs. 1,299-12-5, and under section 13 of Act III of 1873 the District Court is the proper appellate tribunal. The decision in *Sithalakshmi* v. *Vythilinga*(1) is an authority only for the proposition that a Subordinate Court has a special jurisdiction as the Court executing a decree to try under section 331 a claim of which the value of the subject-matter falls below the pecuniary limits of its ordinary jurisdiction, Rs. 2,500. The question which we have now to decide is whether an appeal lies to the High Court from the decree of the Subordinate Judge exercising the special jurisdiction when the value of the subject-matter of the claim is below Rs. 5,000. It is provided by section 331 that the Court (executing the decree) shall proceed to investigate every such claim "in the same manner and with the like power as if a suit for the "property had been instituted by the decree-holder against the "claimant under the provisions of Chapter V and shall pass such "order as it thinks fit for executing or staying execution of the "decree and that every such order shall have the same force as "a decree and shall be subject to the same conditions as to appeal "or otherwise." According to the language of the section, the claim is to be regarded as a suit to recover the property claimed from the person or persons obstructing the execution of the decree and the order adjudicating upon it as a decree passed in such suit subject as to appeal to the law by which such decree would ordinarily be governed. It may be that a special original jurisdiction is created in favour of the Court executing the decree in consideration of special convenience, but those considerations have no bearing on the question whether the Appellate Court should be the District Court or the High Court. It is said that it is the value of the entire property which was the subject-matter of the decree under execution that ought to be considered; but this contention is inconsistent with the plain wording of section 331, which only places the claim on the same footing with an original suit instituted to recover the specific property claimed and as to which the respondents have obstructed execution. As to the decision reported in the Bombay series, I was one of the Judges who dissented from it in *Muttammal* v. *Chinnana Gounden*(2), and, though the majority of the Court did not approve of it in *Sithalakshmi* v. *Vythilinga*(1), it was on a point which does not arise in the suit

(1) I.L.R., 8 Mad., 548. (2) I.L.R., 4 Mad., 220.

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before us. I think that the preliminary objection must prevail and that the order should be that the appeals be returned to the appellants for presentation, if so advised, to the District Court. The appellants must pay respondent's costs.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Muthusami Ayyar.

1890. Feb. 24, 26, 27. April 2.

RANGACHARIAR (DEFENDANT), APPELLANT,

v.

YEGNA DIKSHATUR (PLAINTIFF), RESPONDENT.*

Hindu law—Succession to a jeer of a mutt—Nomination requiring assumption of the character of a sannyasi—Time fixed by decree for assumption of that character—Enlargement on appeal of that time—Evidence of custom.

The plaintiff sued for a declaration of his right as jeer of a mutt and for possession of the property of the mutt. The plaintiff alleged that the immemorial custom with reference to the succession to the office of jeer was that the jeer for the time being nominated his successor, and that, failing such nomination, the disciples assembled at the place where he died, elected his successor, and that the person so nominated became jeer by virtue of such nomination alone. The plaintiff's case was that he was nominated by the late jeer, although the nomination was not concurred in by the disciples, and that the late jeer had initiated him and directed him to become a sannyasi a day or two after his initiation, and that he was accordingly entitled to the rights and privileges of jeer. The plaintiff obtained a decree which was, however, made contingent upon his assuming the character of a sannyasi within the period of four months. The defendant preferred an appeal against this decree, and the plaintiff preferred an appeal praying for the enlargement of the period fixed, within which he was to become a sannyasi, pending the disposal of the appeal preferred by the defendant.

On the plaintiff's appeal:

Held, the Court had power to extend the time as prayed.

On the defendant's appeal:

Held, (1) on its appearing that the plaintiff did not repeat the prosha mantram that his upadesam was insufficient;

(2) that the plaintiff's right, if any, to the status of jeer ceased on his omission to become a sannyasi soon after the initiation alleged;

(3) on the evidence that no similar case of succession had taken place in the history of the institution that the plaintiff had established merely an imperfect nomination which could not be upheld on the principles deducible from the known cases of succession.

* Appeals Nos. 16 and 20 of 1889.