

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.*

PERUMÁL (DEFENDANT No. 1), PETITIONER,
and

VENKATARÁMÁ (PLAINTIFF), RESPONDENT.*

*Civil Procedure Code, ss. 223, 228, 249, 622—Mufassal Small Cause Court Act
(Act XI of 1865), ss. 20, 21—Execution proceedings—Appeal.*

The plaintiff obtained a decree in a small cause suit in a Subordinate Court in the mufassal and a certificate was granted to him under s. 20 of the Mufassal Small Cause Court Act for the execution of the decree against immovable property of the judgment-debtor in the jurisdiction of a District Múnsif. He accordingly presented a petition to the District Múnsif under s. 247 of the Code of Civil Procedure, but his petition was dismissed :

Held, that an appeal lay to the District Court.

PETITION under s. 622 of the Code of Civil Procedure, praying the High Court to revise the order of T. Weir, District Judge of Madura, on Civil Miscellaneous Appeal No. 29 of 1886, dismissing an appeal against the order of A. L. Lakshmana Chettyár, District Múnsif of Tirumangalam, on Civil Miscellaneous Petition No. 401 of 1886.

The plaintiff in a small cause suit on the file of the Subordinate Court of Madura (East) obtained a decree, which he sought to execute under a certificate granted by the Subordinate Judge under s. 20 of the Mufassal Small Cause Court Act against the immovable property of the judgment-debtor situated within the jurisdiction of the District Múnsif of Tirumangalam.

The plaintiff accordingly presented a petition to the District Múnsif under s. 249 of the Code of Civil Procedure, but the District Múnsif refused to grant execution on the ground that the plaintiff's claim was barred by limitation. An appeal was then preferred to the District Judge, who, however, ruled that no appeal lay from the order of the District Múnsif rejecting the petition, since it was made on an application in execution of a Small Cause Court decree.

* Civil Revision Petition No. 269 of 1886.

The plaintiff preferred this petition on the ground that the District Judge had declined jurisdiction, since the order appealed against was not an order of a Small Cause Court.

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Subramanya Ayyar for petitioner.

Bhášhyam Ayyangár for respondent.

The further facts of this case and the arguments adduced on this petition appear sufficiently, for the purpose of this report, from the judgment of the Court (Collins, C.J., and Parker, J.).

JUDGMENT.—The decree, in which execution is sought, is one passed in a small cause suit (2680 of 1869) on the file of the Subordinate Court of Madura (East). The decree not being satisfied by execution against the movable property of the judgment-debtor in the jurisdiction of the Small Cause Court, a certificate was granted by that Court to the decree-holder under s. 20 (Act XI of 1865), on the strength of which he applied to attach in execution certain immovable property within the jurisdiction of the Court of the District Múnsif of Tirumangalam.

Notice was issued to the defendants, and on objections raised by them, the execution was held by the District Múnsif to be barred. The judgment-creditor appealed, but the District Judge held that no appeal lay, since s. 21 of the Mufassal Small Cause Courts Act provided that in the suits tried under that Act all decisions and orders of *the Court* shall be final. The District Judge, therefore, declined jurisdiction, and the present application is to revise his order under s. 622 of the Code of Civil Procedure.

It appears to us that the words "the Court" in s. 21 refer only to the Court constituted under that Act, that is, the Court of Small Causes which has a limited jurisdiction assigned to it under s. 6 and limited powers in execution of decrees passed by itself. Section 20 provides that if execution cannot be had against the movable property of the judgment-debtor, the certificate granted by the Small Cause Court may be presented to "any Court of Civil Judicature having general jurisdiction in the place in which the immovable property of the judgment-debtor is situate," and "such Court shall proceed to enforce such judgment according to its own rules and mode of procedure in like cases."

The Court of a District Múnsif is such a Court of general jurisdiction as is here contemplated, and its orders are subject to appeal.

The enactment of s. 223 of the Code of Civil Procedure has not modified s. 20 of Act XI of 1865—vide *Kahánaráma v.*

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Ranga(1). Sections 223 and 228 of the Code of Civil Procedure are alike applicable to Small Cause Courts (see sch. II), and under s. 228 the orders of a Court executing a decree are subject to the same rules in respect of appeal as if the decree had been passed by itself.

It is no doubt the case that no second appeal would lie from the order of the District Judge in such a case—*Gorachand Misser v. Raja Baykanto Narain Singh*(2); but with regard to a regular appeal the question whether it will lie seems to us to depend upon the character of the tribunal and not upon the nature of the claim.

The order of the District Judge must be set aside, and he must be directed to hear and dispose of the appeal. The costs will abide and follow the result.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Brandt.*

PATUMMA (COUNTER-PETITIONER), APPELLANT,

and

MUSE BEARI (PETITIONER), RESPONDENT.*

Civil Procedure Code, s. 230—Execution proceedings—Limitation.

An application was made in 1886 for execution of a decree dated 1873. In the interval, viz., in October 1879, the judgment-debtor was arrested on an application in execution by the decree-holder, but execution was not proceeded with further:

Held, that the application made in 1886 was time-barred under s. 230 of the Code of Civil Procedure.

APPEAL against the order of J. W. Best, District Judge of South Canara, on Civil Miscellaneous Petition No. 308 of 1886, reversing the order of J. P. Fernandes, District Munsif of Kassargode, in execution petition No. 92 of 1886.

This was an application for execution of a decree passed in Original Suit No. 145 of 1872, dated the 9th September 1873. The present application was made on 19th March 1886. In the interval, viz., in October 1879, process was issued on the application of the present petitioner, for the arrest of the judgment-

(1) I.L.R., 8 Mad., 8.

(2) 12 B.L.R., 261.

* Appeal against Order 33 of 1887.