

defendant to the plaintiff was not discharged by payment to defendants Nos. 1 and 3.

The appeal must therefore be allowed, the decree of the District Judge reversed and that of the Subordinate Judge restored with costs in this Court and the lower Appellate Court. The memorandum of objections is dismissed with costs.

MUNRO, J.—I agree.

Messrs. *David & Brightwell*, Attorneys for third respondent.

MUNRO
AND
ABDOU
RAHIM, JJ.
—
GOPALA-
KRISHNA
IYER
V.
GOPALA-
KRISHNA
IYER.

APPELLATE CIVIL.

*Before Sir R. S. Benson, Officiating Chief Justice, and
Mr. Justice Sankaran-Nair.*

SUNDARA BAI SAHIBA (PLAINTIFF), APPELLANT IN ORIGINAL
SIDE APPEALS NOS. 82 AND 85 OF 1906,

1909.
August 24, 25.

v.

TIRUMAL RAO SAHIB AND ANOTHER (DEFENDANTS),
RESPONDENTS IN THE ABOVE.*

*Jurisdiction—Letters Patent, cl. 12—Suit for land—Suit in which decree
is asked for operating directly on land, is a suit for land.*

A suit which prays for any relief with reference to any specific immoveable property is a suit for land within the meaning of clause 12 of the Letters Patent. Where in a suit for maintenance the plaintiff prays that the amount may be charged, not on the ancestral property generally, but on specific land, the suit is a suit for such land within the meaning of clause 12 of the Letters Patent.

APPEAL from the decree of Boddam, J., dated the 28th day of November 1906, in the exercise of the ordinary original civil jurisdiction of the Court, made in Civil Suit No. 164 of 1905.

The facts are stated fully in the judgment.

L. A. Govindaraghava Ayyar and *G. Krishnaswami Ayyar* for appellant.

The Hon. Mr. *V. Krishnaswami Ayyar* for respondents.

In Appeal No. 82 of 1906.

JUDGMENT.—The plaintiff a widow, sues the defendants her sons, for maintenance. She prays that her maintenance may be

* Original Side Appeals Nos. 82 and 85 of 1906.

BENSON, C.J., charged on certain immoveable property situated within the local limits of the original jurisdiction of the High Court.

AND
SANKARAN-
NAIR, J.

Her suit is dismissed on the ground that the High Court has no jurisdiction to entertain the suit.

SUNDARA
BAI SAHIBA
v.

TIRUMAL
RAO SAHIB.

The question is whether the suit is 'for land' within clause 12 of the Letters Patent. It is contended that suits for the recovery of possession alone fall within the clause.

The High Court of Calcutta has held that suits to establish title to land, suits for foreclosures, sale, redemption and suits for specific performance of contract for sale of land, are suits for land, and in a judgment in which the question was fully considered, Moore, J., held that a suit for sale is a 'suit for land,' following certain Calcutta decisions. See *Nalum Lakshminikantham v. Krishnaswamy Mudaliar*(1) and the Calcutta cases referred to therein; also, *The Delhi & London Bank v. Wordie*(2), *Kellie v. Fraser*(3), *Sreenath Roy v. Cally Doss Ghose*(4), *Land Mortgage Bank v. Sudurudeen Ahmed*(5).

In Bombay in the cases reported in *Venkoba Kdsar v. Rambhaji valad Arjun*(6), *His Highness Shrimant Maharaj Yashvantray Holkar v. Dadabhai Cursetji Ashburner*(7), the Judges took the contrary view, but in *Soralji v. Rattongji*(8), Strachey, J., expressed his opinion that in the absence of authority upon the point he should have had great difficulty in holding that a suit for foreclosure is not a 'suit for land.' The authority of these decisions is considerably shaken if they are not overruled by the later decision in *Vaghoji v. Camaji*(9).

The decisions of the Calcutta High Court are based on the ground that any suit in which a decree is asked for operating directly on the land is a suit for land. This is in accordance with the principle, that all questions relating to land should ordinarily be decided by the Court, within the limits of whose jurisdiction it lies. We are, therefore, inclined to hold that a suit which prays for any relief with reference to any specific immoveable property is a suit for land.

(1) (1904) I.L.R., 27 Mad., 157 at p. 161.

(2) (1876) I.L.R., 1 Calc., 249.

(3) (1877) I.L.R., 2 Calc., 445.

(4) (1880) I.L.R., 5 Calc., 82.

(5) (1892) I.L.R., 19 Calc., 358 at p. 361 (note).

(6) (1872) 9 B.H.C.R., 12.

(7) (1890) I.L.R., 14 Bom., 353.

(8) (1898) I.L.R., 22 Bom., 701 at p. 704.

(9) (1905) I.L.R., 29 Bom., 249.

The plaintiff's right of maintenance is not merely a personal obligation. It is a real right but it is not a charge or any other proprietary right until it is referred to specific property by contract or decree.

Where, therefore, in a suit for maintenance the plaintiff only prays for a decree charging her maintenance on ancestral property without specifying any particular portion of that property, the suit may not be a suit for land as she does not claim any relief against any specified property. But where she claims to have her maintenance made a charge on specified immoveable property, we are of opinion that she prays for a decree to operate directly on the land. The decree to be passed if she succeeds is a decree against that property. If the defendant fails to pay her decree debt, it may be sold, if the decree is so framed, for the purpose of discharging the same.

We are therefore of opinion that the suit is 'for land.'

The only question that remains for consideration is the rate of maintenance. There is evidence that during her husband's lifetime the plaintiff was living apart and under exhibit C she was to get for her maintenance a sum of Rs. 50 (fifty) a month. Since then she has become a widow. The sum of Rs. 250 (two hundred and fifty) which the father jagirdar paid to the family has been reduced to Rs. 160 (one hundred and sixty) and there has been litigation in which the members of the family were involved. Taking these circumstances and the state of the family into consideration, we think that maintenance may be awarded at the rate of Rs. 40 (forty) a month. The plaintiff is also entitled to arrears of maintenance for 3 (three) years prior to date of suit at that rate. The maintenance accruing due from this date will be payable on or before the 10th of every month.

We therefore pass a decree for maintenance at the above rate and direct that such maintenance as well as arrears be made a charge as prayed for on the property specified in the plaint. The arrears decreed will be paid in three equal instalments, the first instalment to be paid on or before the 15th November next and the other instalments at intervals of four months from that date. We further direct that on default the said property may be sold in execution to discharge the amount due. Both parties will pay and receive proportionate costs throughout.

BENSON, C.J.,
AND
SANKARAN-
NAIR, J.

SUNBADA
DAI SAMIBA
v.
TIRUMAL
RAO SAMIS.

BENSON, C.J.,
AND
SANKARAN-
NAIR, J.
—
SUNDARA
RAI SAHIBA
v.
TIRUMAL
BAO SAHIB.

In Appeal No. 85 of 1906.

At this stage, it is unnecessary to make the purchaser who is bound by the decree in the suit or appeal a party. The appeal is therefore dismissed.

APPELLATE CIVIL.

Before Mr. Justice Munro and Mr. Justice Abdur Rahim.

1909.
July 26.
August, 6, 1909.
September
28.

THE OFFICIAL ASSIGNEE OF MADRAS AND AS SUCH
THE ASSIGNEE OF THE PROPERTY AND CREDITS OF
ARBUTHNOT & COMPANY, INSOLVENT DEBTORS
(APPELLANT),

v.

L. D. RAMACHANDRA IYER (RESPONDENT).*

Indian Insolvency Act, 11 & 12 Vict., cap. 21, s. 73—'Person aggrieved,' who is—Official Assignee, right of, to appeal as person aggrieved—Fiduciary relationship—Effect of demand by creditor in creating fiduciary relationship between him and debtor.

A 'person aggrieved,' within the meaning of section 73 of the Indian Insolvency Act, is a person against whom a decision has been pronounced which has wrongly refused him something which he had a right to demand.

Where a debtor, whose claim to be paid in full was rejected by the Official Assignee, moved the Insolvency Court making the Official Assignee a party and obtained an order directing payment in full, the Official Assignee is a 'person aggrieved' within the meaning of section 73 of the Act and is entitled to appeal against such order.

Ex parte Sidebottom in re Sidebottom, [(1880) 14 Ch.D., 458 at p. 465], referred to.

In re Lamb; ex parte Board of Trade, [(1894) 2 Q.B.D., 805], referred to.

The Official Assignee, in refusing the creditor's claim, does not act judicially and the notice of motion to Court cannot be considered as an appeal against a judicial or quasi-judicial proceeding of the Assignee.

Where a person pays money into a Bank without giving any directions, the money becomes the property of the Bank and the relation between the Bank and the person paying is that of debtor and creditor.

Per MUNRO, J.—Where the person paying money without any directions makes a proper demand for payment after the money has become payable, the debtor is bound to remit at once such money to the creditor; and the debtor thereafter holds such money in a fiduciary capacity, just as if the creditor had received payment and deposited it with directions to remit.

Per ABDUR RAHIM, J.—It is not competent to a creditor by making a demand upon his debtor, to convert the latter into a trustee in respect of the amount