mortgagee of immovable property, I do not see any reason why a mortgagee of movable property is not entitled to a right of sale quite as much as a mortgagee of immovable property.

In this case there is a further difficulty. The present appellant was a party to the decree in the mortgage suit. Even assuming, as is argued on his behalf, that there was only a lien declared by the decree as regards the movable property, still, being a party to the decree, his rights can only be subject to this lien and he cannot be heard now to say that his rights should be recognized first, and that the rights of the decree-holder in the mortgage suit should be recognized only later.

In these circumstances I think the order of the lower Court is right and this civil miscellaneous second appeal is dismissed with costs.

K.W.R.

APPELLATE CIVIL.

Before Mr. Justice Bardswell.

KARUPPAYYA NADAR (PETITIONER), PETITIONER,

v.

PONNUSAMI NADAR AND ANOTHER (RESPONDENTS), RESPONDENTS.*

1932, October 19.

Injunction—High Court—Power to grant injunction independently of the Code of Civil Procedure—Appeal or revision from case in mofussil Court—Power in.

A mofussil Court cannot grant an injunction otherwise than in accordance with the provisions of Order XXXIX of the Code

* Civil Miscellaneous Petition No. 4376 of 1932.

KARUPPAYYA v. PONNUSAMI.

of Civil Procedure. Under Clause 21 of the Letters Patent, the High Court, dealing as appellate or revisional authority with a case coming from a mofussil Court, can only apply such law or equity and rule of good conscience, as would be applied by that mofussil Court; that is, it can only grant an injunction in respect of such a case in accordance with the provisions of Order XXXIX, Civil Procedure Code. It is only while acting in the exercise of its ordinary original civil jurisdiction that the High Court has powers, under its general equity jurisdiction, to grant an injunction independently of the Code of Civil Procedure.

PETITION praying that the High Court will be pleased to issue an injunction restraining the respondents from executing the decree in Original Suit No. 57 of 1931 on the file of the Court of the Subordinate Judge of Ramnad at Madura, pending Civil Revision Petition No. 991 of 1932 presented to the High Court to revise the order of the Court of the Subordinate Judge of Ramnad at Madura, dated 8th July 1932, and made in Interlocutory Application No. 170 of 1932 in the said Original Suit No. 57 of 1931.

K. S. Champakesa Ayyangar for petitioner.

Watrap S. Subrahmanya Ayyar for respondents.

Cur. adv. vult.

ORDER.

The petitioner is the defendant in Original Suit No. 57 of 1931 on the file of the Principal Subordinate Judge of Ramnad at Madura. A decree was passed against the petitioner *ex parte*. He then applied for the setting aside of that decree and it was ordered that it should be set aside if he gave security for the suit amount and costs within three weeks. The order as to this was passed on 12th March 1932 and a draft security bond was filed on 15th March 1932. The report of the Amin as to the sufficiency of the security was not received within the three weeks' time allowed for

furnishing security, and so an application (Interlocutory Application No. 170 of 1932) was made for extending the time but, after notice had been given to the other side, the learned Subordinate Judge held, on 8th July 1932, that the security had not been furnished within the time allowed and that it was not competent for him to extend the time, and dismissed the application. In the meantime, according to the petitioner's affidavit, the Amin had reported that the security offered was sufficient. Against this order on Interlocutory Application No. 170 of 1932 the petitioner has come up on revision.

The petitioner at first filed Civil Miscellaneous Petition No. 3428 of 1932, praying for stay of execution of the decree in Original Suit No. 57 of 1931 pending the disposal of the revision petition. This petition I am dismissing because there was no appeal against, or even petition for revision of, the decree in that suit. Subsequently the present petition has been filed, praying for an injunction restraining the respondents-plaintiffs from executing the decree in the said suit pending disposal of the revision petition.

It is objected that no injunction can be granted in this case. It is not a case that falls under either rule 1 or rule 2 of Order XXXIX, Civil Procedure Code, and it has been held by this Court in *Varadacharyulu* v. *Narasimhacharyulu*(1) and *Ayyaperumal Nadar* v. *Muthuswami Pillai*(2) that the High Court has no power to grant an injunction under its inherent powers in cases not governed by Order XXXIX. These decisions I have myself recently had occasion to follow in Civil Miscellaneous Petition No. 3349 of 1932. That this is a correct view of the law, as far as it is contained in the

(1) (1925) 23 L.W. 85.

(2) (1927) 26 L.W. 899.

KARUPPAYYA v. PONNUSAMI.

Civil Procedure Code, is not denied by the learned Advocate for the petitioner, but he contends that, apart from the Code, this Court has extraordinary powers of granting injunctions, which powers it derives from the Supreme Court. He relies on the decision of CURGENVEN J. in *Govindarajulu Nayudu* v. *Imperial Bank of India, Vellore*(1). In that case the learned Judge, in dealing with a prayer for an injunction to restrain from the execution of a decree during the pendency of an appeal against an order of the Subordinate Judge of Vellore, held that the High Courts possess, over and above the powers which they enjoy under the Civil Procedure Code, an equitable jurisdiction, derived from the old Supreme Court, to issue an injunction in appropriate cases and are not bound by the terms of the Code in issuing such injunction. For the respondents it is urged that the learned Judge has not considered the provisions of the Letters Patent to which, indeed, as far as can be seen from his decision, his attention was not drawn. Emphasis is now laid on those provisions. It is only under Clause 19 of the Letters Patent that a Chartered High Court can administer the law and equity that would have been applied by such High Court if the Letters Patent had not been issued, and the cases in which it can apply such law or equity are cases arising in the exercise of its ordinary original civil jurisdiction. By Clause 20, in the exercise of its extraordinary original civil jurisdiction, it can apply to a case the law or equity and rule of good conscience which would have been applied to such case by any local Court having jurisdiction therein; while under Clause 21, which governs the case under notice, it has to apply to any case that comes before it in the exercise

(1) (1931) 35 L.W. 168.

of its appellate jurisdiction of which revisional jurisdiction forms a part, the law or equity and rule of good conscience which the Court in which the proceedings in such case were originally instituted ought to have applied to such case. Now, if a High Court cannot grant an injunction under the terms of the Civil Procedure Code otherwise than in accordance with Order XXXIX, it is certain that neither can a mofussil Court do so; and it is also certain that no mofussil Court exercises powers derived from the Supreme Court. If, then, the High Court deals, as appellate or revisional authority, with a case coming from a mofussil Court, it can only apply such law or equity and rule of good conscience as would be applied by that mofussil Court, and from this it follows that it can only grant an injunction in respect of such a case in accordance with the provisions of Order XXXIX.

CURGENVEN J. has referred in *Govindarajulu Nayudu* v. *Imperial Bank of India, Vellore*(1) to two Calcutta cases, *Rash Behary Dey* v. *Bhowani Churn Bhose*(2) and *Mungle Chand* v. *Gopal Ram*(3), respectively. But in each of those cases the Calcutta High Court, when it held that it had powers under its general equity jurisdiction, to grant an injunction independently of the Code of Civil Procedure, was acting in the exercise of its ordinary original civil jurisdiction. The learned Judge has also referred to *Periakaruppan Chettiar* v. *Ramasami Chettiar* (4) which was decided by a divisional bench of this Court. In that case the learned Judges held that the Chartered High Courts have power to restrain by injunction a party from prosecuting a suit in a foreign Court (though within the British Empire), but they have not, as far as I understand the decision, held that such

(1) (1931) 35 L.W. 168.
(2) (1906) I.L.R. 34 Calc. 97.
(3) (1906) I.L.R. 34 Calc. 101.
(4) (1928) 27 L.W. 418.

KARUPPAYYA v. PONNUSAMI.

power can be used in the exercise of appellate or revisional jurisdiction in cases arising from Courts in the mofussil, and they certainly did not make use of such a power. What happened was that they doubted whether such a power could be exercised by a subordinate Court, and then, dealing with the facts of the case, which was one that came before them on an appeal from a Subordinate Judge, on the assumption that a subordinate Court had such power, held that the Subordinate Judge was not warranted in making use of it. The result was that an injunction which the Subordinate Judge had granted was discharged, the petition praying for it being dismissed. In these circumstances I do not think that the decision is an authority for the High Court's having power to grant an injunction in a case that comes before it, on appeal or revision, from a subordinate Court in the mofussil. Were it such an authority, I should, of course be obliged to follow it. I would note that none of the decisions to which it has referred as to the High Court having authority, outside what is provided for in the Civil Procedure Code, to grant an injunction, has to do with cases in which the High Court was not exercising its ordinary original civil jurisdiction. Two of them are the decisions in *Rash Behary Dey* v. *Bhowani Churn Bhose*(1) and *Mungle Chand* v. *Gopal Ram*(2), to which I have already referred. Another is that in *Uderam Kesaji* v. *Hyderally*(3), in which, however, reliance was placed not only on powers inherited from the Supreme Court but also on inherent powers, with which I am not now concerned in the face of what is the view of this High Court in that connection. Another is *Mulchand Raichand* v. *Gill & Co.*(4), and another is

(1) (1906) I.L.R. 34 Calc. 97.
(2) (1906) I.L.R. 34 Calc. 101.
(3) (1908) I.L.R. 33 Bom. 469.
(4) (1919) I.L.R. 44 Bom. 283.

Tikamchand Santokchand v. *Santokchand Singhi*(1), which again is a decision of the Calcutta High Court. All these decisions have to do with cases in which a High Court was acting in the exercise of its ordinary original civil jurisdiction.

The other case referred to in *Govindarajulu Nayudu* v. *Imperial Bank of India, Vellore*(2) is *Singaravelu Mudali* v. *Balasubramania Mudali*(3) in which the decision was by a single Judge, but in that case the injunction was found by the learned Judge to be one that could be brought within the terms of Order XXXIX, rule 2, and his other remarks were not necessary for the decision of the petition that was then before him. Nor has the learned Judge dealt with the provisions of the Letters Patent.

My conclusions are that there is no authority of this Court on the subject now before me which I am bound to follow and that, in the light of Clause 21 of the Letters Patent, of which I find no discussion in any decision of this Court that has been brought to my notice, this is not a case in which this Court can grant an injunction. The petition is, therefore, dismissed with costs.

K.W.R.

(1) (1920) 59 I.C. 218. (2) (1931) 35 L.W. 168.
(3) (1926) 24 L.W. 421.