

should be maintained, and that the desái himself should be enabled to perform the functions of his office, be they greater or less, properly and in a manner suitable to his position as a subordinate officer, and to some extent a representative, of the Government. This policy has been recognized and enforced by various Acts of the Legislature, the latest being, apparently, Act No. III of 1874 of the Legislative Council of Bombay. The provisions of that statute seem to be in some degree retrospective.

Hence, although the decision of the High Court is in substance right, their Lordships think that it should be accompanied by a declaration that the decree is to be without prejudice to the defendant's right to such emoluments or allowances for the performance of the duties of the desáiship as he may be entitled to under any law in force. And, accordingly, they will humbly recommend to Her Majesty that such a declaration be added to the decree of the High Court; but that, subject thereto, the said decree be affirmed. They also direct that the costs of this appeal be taxed; that the amount of such costs, when taxed, be added to the costs of the cause, and paid with them out of the estate.

Solicitors for the appellant.—Messrs. *Ashurst, Morris, Crisp, and Co.*

Solicitors for the respondent.—Messrs. *Ramsden and Austin.*

APPELLATE CIVIL.

Before Mr. Justice M. Melvill and Mr. Justice Pinhey.

CHHAGANLA'L NA'GARDA'S, PLAINTIFF, *v.* JESHAN RA'V
DALSUKHRA'M, DEFENDANT.*

1879
September 23.

Jurisdiction—Personal property—Court of Small Causes—Suit by decree-holder.

A suit by a decree-holder to establish his right to attach and sell moveable property as belonging to his judgment-debtor, is not a suit for personal property within the meaning of section 6 of Act XI of 1865, and a Mofussil Court of Small Causes has no jurisdiction to entertain it, even though the value of the property be such as to fall within its pecuniary limit.

THIS was a case stated by S. H. Phillpotts, Judge of Ahmedabad, under section 527 of the Code of Civil Procedure.

* Civil Reference, No. 12 of 1879.

1879

CHHAGANLAL
NA'GARDA'S
v.
JESHAN RA'V
DALSUKHRA'M

The plaintiff's deceased father obtained a decree in the Small Cause Court of Ahmedabad against one Jagjivan, and in execution thereof attached certain moveable property, valuing it at Rs. 60-5-3. The defendant Jeshan Ráv intervened, alleging that the property had been sold to him, and the attachment was in consequence removed. The plaintiff thereupon brought the present suit, and presented his plaint in the Court of the Subordinate Judge (First Class) at Ahmedabad. The plaint was, however, returned by the Joint Subordinate Judge, who was of opinion that he had no jurisdiction. The plaintiff next presented his plaint to the Judge of the Court of Small Causes, who held that he had no jurisdiction. The plaintiff, therefore, went back to the First Class Subordinate Judge, but he refused to alter the previous decision of the Joint Subordinate Judge. An appeal was, therefore, made to the District Judge, who, in referring the case for the orders of the High Court, said: "I am of opinion that the Small Cause Court has jurisdiction, as I can conceive no reason for any difference being made between this and the converse case, and the High Court have decided in *Gordhan Prema v. Kasandás* ⁽¹⁾ that the suit brought by a defeated claimant, under section 283 of Act X of 1877, is cognizable by a Court of Small Causes."

There was no appearance in the High Court by either party.

The judgment was delivered by

MELVILL, J.—It has been decided by the Court in *Nathu Ganesh v. Kálidás* ⁽²⁾ and *Gordhan Prema v. Kasandás* ⁽³⁾ that, whether under the old or the new Code, the suit of a claimant whose property has been attached, is cognizable by a Court of Small Causes when the property is moveable property of a value not exceeding Rs. 500. The reason for these decisions was that a suit, *by the owner*, for the recovery of attached property may properly be regarded as a suit "for personal property". But a suit *by a decree-holder*, to establish his right to attach and sell certain property as belonging to his judgment-debtor, cannot be called a suit for personal property. The distinction is clearly pointed out in *Nathu v. Kálidás*, and it is there shown how this

(1) I. L. R., 3 Bom. 181.

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

(3) I. L. R., 3 Bom. 179.

distinction explains the decisions of the Calcutta and Madras High Courts which are there quoted. None of those decisions is in favour of the proposition that a suit by a judgment-creditor to establish his debtor's title is cognizable by a Court of Small Causes, and the ruling of this Court in *Jethábhái v. Báí Lakhá* ⁽¹⁾ is directly adverse to it. The District Judge must be informed that this Court does not concur in the view taken by him, and, consequently, that the Subordinate Judge's order must be reversed, and the plaint received. It may, no doubt, as the District Judge observes, be somewhat anomalous that a Court of Small Causes should be able to try the suit of one claimant, but not that of the other, when the two suits arise out of the same circumstances, and involve the same issues; but the anomaly is caused by the wording of section 6 of Act XI of 1865, and can only be removed by an amendment of that section.

1879

CHHAGANLAL
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v.
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DALSUKHRA'

(1) 6 Bom. H. C. Rep. 27.

NOTE.—This decision was followed in the case of *Bálkrishna v. Kisansing*, Extraordinary Application No. 153 of 1879, decided by M. Melvill and Kemball, JJ., on the 10th of August, 1880.

APPELLATE CIVIL.

Before Sir M. R. Westropp, Kt., Chief Justice, and Mr. Justice F. D. Melvill.

THE COLLECTOR OF AHMEDABAD (ORIGINAL DEFENDANT), APPELLANT,
v. BA'LA'BHAI KEVALDA'S (ORIGINAL PLAINTIFF), RESPONDENT.*

1880
April 6.

Bombay Acts I of 1865 and IV of 1868, Section 5, Clause 1, Para. 2—Building-sites—Exemption from payment of Government land revenue.

On the 6th April, 1836, the Collector of Ahmedabad demised by lease a building-site in that city to the plaintiff's grandfather for a term of ninety-nine years. No rent was reserved by the lease as then presently payable, but it contained a provision that the lessee should pay, in respect of the said site, such land-tax as might "fall upon all". The lessee and his heirs held the site from the date of the lease down to 1878, without paying or being required to pay any land-tax or rent to Government. In 1878, however, Government levied from the plaintiff Rs. 2-11 as land revenue assessed on the site. Plaintiff thereupon sued the Collector of Ahmedabad for recovery of the amount, on the ground that the assessment and levy were illegal.

* Appeal No. 2 of 1880 from original decrees.