

respective dates of execution as provided by section 47, and the rights of the parties must be determined by Hindu law. Now it might, we think, be fairly contended that the plaintiff's title was completed by possession, the plaintiff being in possession at the time of the sale to him as *chalgeni* tenant and being directed by his sale-deed to pay the *mulgeni* rent thenceforth to the persons entitled to it. But, assuming that his title was not completed by possession, still the defendant No. 2 had notice of the fact, as recited in his deed of sale, that the land was in the possession of the plaintiff as tenant, and must according to the decisions—*Muncherji Sorabji Chulla v. Kongseoo*⁽¹⁾; *Kanáyálál v. Pyárábái*⁽²⁾—be deemed to have had notice of the plaintiff's equitable title to the lands. The decrees of the Courts below must, therefore, be reversed, and a declaration made that plaintiff is entitled to the land in question on payment of Rs. 70 to the second defendant in part payment of the money which the latter is entitled to recover from the representatives of the first defendant, Náráyan.

The representatives of the first and second defendants to pay the plaintiff's costs throughout, with liberty to the representatives of the second defendant to recover such sums as he may pay in respect of such costs from the representatives of the first defendant.

Decrees reversed.

⁽¹⁾ 6 Bom. H. C. Rep., O. C. J., 59.

⁽²⁾ I. L. R., 7 Bom., pp. 139, 145.

APPELLATE CIVIL.

Before Mr. Justice Kemball and Mr. Justice Pinhey.

SADA'SHIV LALIT (ORIGINAL PLAINTIFF), APPELLANT, v. JAYANTIBAI,
WIDOW OF GOVIND PA'DHYE (ORIGINAL PLAINTIFF), RESPONDENT.*

January 30.

Decree—Execution—Civil Procedure Code (Act X of 1877), Sec. 266—Sale in execution—Vritti.

Where the decree of a Civil Court expressly declares that a person's right in a *vritti* shall be sold, it is not competent in execution proceedings to question the command, on the ground of the *vritti* being protected from sale under section 266 of the Code of Civil Procedure, or from its being by the nature of it unsaleable to the public at large.

* Second Appeal, No. 24 of 1882.

1883

SADÁSHIV
LALIT
v.
JAYANTIBÁI.

THIS was a second appeal from the decision of C. B. Izon, Judge of the District of Ratnágiri, confirming an order of the Subordinate Judge of Rájápur.

On the 3rd of April, 1872, Govind Pádhye, the husband of the defendant, mortgaged to the plaintiff his right to officiate at the religious ceremonies in the village of Vátul, in the district of Ratnágiri. The deed of mortgage contemplated that the mortgagee was at liberty to assign and lease that right, and that the mortgagor was precluded from objecting to his so doing. Early in 1880 the plaintiff sued the defendant to recover his money—in the first instance from the mortgaged *writti*, and next from the defendant's property generally, and on the 11th of June, 1880, obtained a decree in terms of the prayer of his plaint. In March, 1881, the plaintiff sought to enforce his decree by a sale of the *writti*. The Subordinate Judge held the *writti* protected from sale by section 266 of the Code of Civil Procedure (Act X of 1877) and the District Judge confirmed his order, holding that the *writti*, from the nature of it, could not be sold, as at the auction sale a Musalmán or Christian might purchase it, and no Musalmán or Christian could officiate at Hindu religious ceremonies.

The plaintiff appealed to the High Court.

Y. V. Athalye for the appellant.—A Court executing a decree performs ministerial functions merely, and has no power to alter the special command made in a decree—*Ambárám Harivallabh-dás v. Himatsing Kalánji*⁽¹⁾; *Bechar-dás Thobhundás v. Gokábia Bhagla*⁽²⁾ In the latter case the Court held that it was not competent to a Judge in execution of a decree, which ordered the sale of mortgaged property, to raise the question whether such property could be sold, and it ordered the decree to be executed according to its terms. But, assuming that the Court has the power of going behind the decree, we say that section 266 applies to money decrees only. If things which are protected by section 266 be actually mortgaged, they are not protected in execution—*Bhagvándás v. Hathibháí*⁽³⁾. Thirdly, it is not correct to say that

(1) 2 Bom. H. C. Rep., 103.

(2) Printed Judgments for 1882, p. 379.

(3) I. L. R., 4 Bom., 25.

a *vritti* cannot be sold under any circumstances. The fact that a Mahomedan or a Christian may possibly buy a Hindu *vritti* is not a ground for not putting it up to auction at all—*Fránáith Punrey v. Shri Mongula Debia*⁽¹⁾.

Gokaldás Káhándás Párek as *amicus curiæ* for the respondent.—Unless the Civil Court possesses machinery for transferring the judgment-debtor's right to the purchaser it could not put up a property to auction sale. At a public auction the public generally should be at liberty to bid. The *vritti* in dispute could not be sold, because the Court could not transfer the judgment-debtor's rights to a Mahomedan or Christian purchaser.

[KEMBALL, J.—A Mahomedan may buy at such a sale, and get an unobjectionable person to officiate. He would be capable of acquiring a right, though not of personally enjoying all the benefits.]

In *Juggunnath Roy Chowdhry v. Kishen Pershad Surmah*⁽²⁾ it was held that a judgment-debtor's right, as *shebait*, to perform the service of an idol could not be sold in execution of a decree; nor could his right to the surplus profits of the *sheba* be sold as long as that right was unascertained and uncertain.

[KEMBALL, J.—The character of the decree does not clearly appear from the judgment.]

A similar decision was arrived at in *Dubo Misser v. Shrinibas Misser*⁽³⁾ and *Kalicharan Gir Gossain v. Bangshi Mohan Dás Baboo*⁽⁴⁾.

KEMBALL, J.—The Courts below have refused to allow a *vritti* to be sold in execution of a decree which directed such sale in satisfaction of a mortgage debt—the Subordinate Judge, on the ground that the said property was not liable under section 266 of the Civil Procedure Code, and the District Judge being of opinion that from its nature it could not be sold, as the right might be purchased by a Musalman or a Christian. But we are of opinion that it was not competent, in execution, to raise such a question, the decree having expressly declared that the mortgagor's right in the *vritti* was to be sold—see the cases of

(1) 5 Cal. W. R., Civ. Rul., 176.

(2) 5 Beng. L. R., 617.

(3) 7 Cal. W. R., Civ. Rul., 266.

(4) 6 Beng. L. R., 727.

1883.

SADÁSHIV
LALIT
v.
JAYANTIBÁL.

Becharáás Thobundás v. Gokália Bhagla alias Bhagwán⁽¹⁾ and
Prannath Panrey v. Shri Mongula Debia⁽²⁾. We, therefore,
reverse the orders of both the lower Courts with costs.

Orders reversed.

(1) Printed Judgments for 1882, p. 379.

(2) 5 Calc. W. R., p. 176.

APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Melvill.

February 8.

GANESH HATHI (PLAINTIFF), APPELLANT, *v.* MEHTA VYA'NKAT-
RA'M HARJIVAN (DEFENDANT), RESPONDENT.*

*Jurisdiction—Court of Small Causes—Suit for money illegally exacted from plaintiff—
Mámíatdár's order—Bombay Act V of 1879. Sec. 87.*

A suit for an amount less than Rs. 500, which the plaintiff alleged to have been illegally exacted from him by the defendant as rent, under a Mámíatdár's order, held to be cognizable by a Court of Small Causes, and not by a Subordinate Civil Court.

A Mámíatdár's order, under section 87 of Bombay Act V of 1879, does not preclude the parties from having recourse to the Civil Courts, if dissatisfied with it.

UNDER section 617 of the Civil Procedure Code, (Act X of 1877,) this case was referred for the decision of the High Court by H. S. Phillpotts, District Judge of Ahmedabad.

The plaintiff, Ganesh, sued the defendant for Rs. 136-5, alleging that the defendant had illegally exacted the amount from him (plaintiff) as rent for land under an order of the Mámíatdár of Daskroi in the táluka of Ahmedabad. The plaintiff had first filed a suit in the Small Cause Court at Ahmedabad to recover this money, but that Court rejected it on the ground that it had no jurisdiction to try it. He then instituted the present suit in the Subordinate Court at the same place. The Subordinate Judge, however, on the 23rd October, 1882, returned the plaint to the plaintiff for its presentation to the proper Court, *viz.*, the Court of Small Causes. The plaintiff thereupon appealed to the District Judge, who referred the case to the High Court, with the following remarks:—

"This is a suit to recover money illegally exacted from the plaintiff, as the High Court have ruled in the case of *Rámchandra*

* Civil Reference, No. 2 of 1883.