

1885.

KASTURSHET
JAVERSHET
v.
RÁMÁ
KÁNHOJI,

SARGENT, C. J.—The Subordinate Judge was not competent to question the validity of the Small Cause Court decree. His duty was confined to enforcing it, on the “presentation of a copy of it and certificate,” as provided by section 20, Act XI of 1865. Nor could he, in our opinion, take any notice of the status of the defendant as an agriculturist. The only course left to the defendant was to apply to the Small Cause Court for a review of its judgment, for which purpose the Subordinate Judge might stay the execution of the decree, as provided by Section 239 of the Code of Civil Procedure (Act XIV of 1882).

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

RA'MCHANDRA BA'BA'JI, APPLICANT, v. SITA'RAM VINA'YAK,
OPPONENT.*

1885.
July 23.

Review—Civil Procedure Code (Act XIV of 1882), Sects. 617, 619 and 623—Subordinate Judge with Small Cause Court powers—Small Cause Court.

The High Court has no power to review a judgment passed by it on a reference from a Subordinate Judge with Small Cause Court powers. Clause (c) of section 623 of the Code of Civil Procedure (XIV of 1882), allows of a review of judgment on a reference only from a Court of Small Causes. The judgment of the High Court in such a case is not a decree or order within the meaning of clause (b) of the section, but is simply a statement of the grounds, in conformity with which the lower Court is to dispose of the case, as provided by section 619.

THIS was an application for a review of the judgment of the High Court in Reference No. 49 of 1884 made by Ráv Bahádúr Náro Mahádev Thosar, First Class Subordinate Judge of Násik, with Small Cause Court power, under section 617 of the Civil Procedure Code (Act XIV of 1882), in the case of *Sitáram Vináyak v. Rámchandra Bábáji*⁽¹⁾. The question referred to the High Court in that case was as to the effect of an agreement made between the plaintiff and the defendant. The High Court held that the decree should be for the plaintiff. The defendant now sought for a review of judgment.

* Application, No. 270 of 1885.

¹ See Printed Judgments for 1885, p. 24.

Diji Abaji Khare for the applicant.—The High Court omitted to consider whether the agreement, which formed the subject of the reference by the Subordinate Judge, was valid or not.

[SARGENT, C. J.—Before we go into that question you must show that we have the power to review our judgment. Under what section do you make your application?]

Under section 623, clauses (b) and (c), of the Civil Procedure Code (XIV of 1882).

[SARGENT, C. J.—But clause (c) contemplates a reference from a Court of Small Causes, not from a Subordinate Judge with Small Cause Court powers.]

SARGENT, C. J.—This is an application for a review of a judgment, passed by this Court under section 619 of the Code of Civil Procedure, on a reference from a Subordinate Judge with Small Cause Court powers. A review is expressly given by section 623 in the case of a judgment on a reference from a Court of Small Causes, but not on one from a Subordinate Judge exercising the powers of a Small Cause Court. Nor is the judgment itself, passed by this Court, a decree or order within clause (b) of section 623, but simply a statement of the grounds, in conformity with which the Subordinate Judge is to dispose of the case, as provided by section 619. We are of opinion, therefore, that the case has, probably by an oversight, been omitted from section 617, and that there is no review.

Application rejected.

APPELLATE CIVIL.

Before Mr. Justice Nánabhái Haridás and Sir William Wedderburn, Bart., Justice.

BA'BURA'V AMRIT PETHE, (ORIGINAL DEFENDANT), APPLICANT, v.
GANPATRA'V DA'MODAR, (ORIGINAL PLAINTIFF), OPPONENT. *

1885.
July 28.

Jurisdiction—Small Cause Court—Suit for interest due on a mortgage.

The plaintiff sued to recover interest due on a mortgage of immoveable property. The defendant pleaded that the plaintiff had received the profits of the mortgaged property, and had got possession of certain materials worth four thousand

* Extraordinary Application, No. 190 of 1884.

1885.
RĀMCHANDRA
BĀBĀJI
v.
SITĀRĀM
VINĀYAK.