

1887.
 IN RE THE
 PETITION
 OF
 RÁDHI.

SARGENT, C. J.—The application by Rádhi to be released from prison was virtually an application for review of the order for her imprisonment, on the ground that it was contrary to law. Two objections were taken to this application by the judgment-creditor. First, that Rádhi should have taken the objection when she was arrested and brought before the Judge, and that not having done so, it is now too late; but her mere omission to do so cannot, as it was contended by the opponent, be regarded as a waiver of her right of exemption from arrest; and, having regard to the nature of the right claimed, it was one which the Court could not properly decline to consider on review, however late the application might have been. Secondly, it was said that the decree was absolute in its terms, and contained no express limitation of her liability; and as she did not apply for a review, no other course was open to the Small Cause Court Judge in executing it but to enforce it in the ordinary manner. The decree had been made in a suit on a bond in which she had joined with her husband as surety, and simply directed her to pay the debt. As the law is clear that in such a case Rádhi would only be liable to the extent of her *stridhan*—*Govindji Khimii v. Lakmidás Nathubhoy*⁽¹⁾ and *Narotam v. Nánka*⁽²⁾—it must be assumed that the direction to pay had reference to that fund only. We think, therefore, that the Small Cause Court Judge was wrong in refusing the application.

(1) I. L. R., 4 Bom., 318.

(2) I. L. R., 6 Bom., 473.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and
 Mr. Justice Náubháí Haridás.

KASTURCHAND GUJAR, PLAINTIFF, v. PARSHA MAHAR,
 DEFENDANT.*

1887.
 September 22.

Jurisdiction—Decree—Execution—British Courts in India, power of, to send their decrees for execution to Courts not in British India—Practice.

The Courts of British India have no authority to send their decrees for execution to Courts not in British India.

THIS was a reference by Ráv Sáheb Venkatrav R. Inámdár, Subordinate Judge of Bijápur, under section 617 of the Civil Procedure Code (Act XIV of 1882).

* Civil Reference, No. 37 of 1887.

The question referred by the Subordinate Judge for the High Court's decision was:—

Has a Court in British India jurisdiction to transfer its decree to a foreign Court, or to a Court in a Native State, for execution by the latter?

The Subordinate Judge's opinion on the point was in the negative.

Chimanlal Hirálal for the plaintiff:—The decree can be sent for execution to the Court in a Native State. The term "Court" as used in section 223 of the Civil Procedure Code will include a foreign Court. In section 12 the word is qualified expressly by the addition of "foreign", and the intention of the Legislature may be gathered from this, that where "Court" is used alone it must include all Courts, and should not be confined to a Court in British India.

Motilal M. Munshi, for the defendant, contended that the British Courts cannot send their decrees for execution by Courts out of British India.

SARGENT, C. J.:—The Courts of British India have no authority to send their decrees for execution to Courts not in British India.

APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and
Mr. Justice Nánábhái Haridás.*

YASHVANT SHENVI AND OTHERS, (ORIGINAL PLAINTIFFS), APPELLANTS, v.
VITHOBÁ SHETI, DECEASED, BY HIS MINOR SON, (ORIGINAL DEFENDANT),
RESPONDENT.*

1887.

September 22.

Mortgage—Mention in mortgage-deed of another debt due to mortgagee distinct from sum advanced at date of mortgage—Clause in deed undertaking to pay off old debts when taking back the land—Old debt not a charge on land, but redemption conditional on payment of both debts—Execution—Claim to attached property—Order passed against claimant—Neglect of claimant to sue within a year after date of order—Civil Procedure Code (Act XIV of 1882), Secs. 278, 279, 280, and 283—Limitation Act XV of 1877, Sch. II, Art. 11.

* Second Appeal, No. 498 of 1885.

KASTURCHAD
GUJAR
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PARSHA
MAHAR.