

APPELLATE CIVIL.

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

SHRI SIDHESHWAR PANDIT, (ORIGINAL PLAINTIFF), APPELLANT, *v.*
SHRI HARIHAR PANDIT, (ORIGINAL DEFENDANT), RESPONDENT.*

1887.
July 20.

Jurisdiction—Act XIV of 1869, Secs. 23 and 24—Subordinate Judge appointed to assist another Subordinate Judge, powers of—Second appeal, objection to jurisdiction on—Practice.

Where a Subordinate Judge is deputed, under section 23 of Act XIV of 1869, to assist another Subordinate Judge, the assistance by the Judge so deputed can only be afforded within the limits of his jurisdiction as fixed by section 24 of the Act, and cannot be invoked, except in matters within his competence.

The plaintiff having obtained a decree against the defendant in a suit in which the subject-matter of the suit and the amount of the decree exceeded Rs. 5,000 in the Court of a Subordinate Judge of the First Class, presented it in that Court for execution. The Subordinate Judge transferred it for execution to the Second Class Subordinate Judge who had been appointed, under Act XIV of 1869, to assist him, and whose jurisdiction extended to Rs. 5,000 only. The Second Class Subordinate Judge ordered execution to issue. The defendant appealed, and this order was reversed. The plaintiff appealed to the High Court, and raised, for the first time, an objection that the Second Class Subordinate Judge had no jurisdiction to entertain the application for execution. The defendant contended that this objection was taken too late on second appeal.

Held, that the Second Class Subordinate Judge had no jurisdiction to entertain and deal with the plaintiff's application for execution, and that the plaintiff's objection should be allowed. An objection to the jurisdiction, the validity of which is patent on the face of the proceedings, can be taken at any stage of the proceedings.

THIS was a second appeal from a decision of Sir William Wedderburn, District Judge of Poona.

The plaintiff instituted this suit, the subject-matter of which was over Rs. 5,000, in the Court of the First Class Subordinate Judge at Poona, and obtained a decree against the defendant, which was also over that amount. He subsequently applied to the same Court for execution of his decree, but the Subordinate Judge transferred the decree for execution to the Second Class Subordinate Judge, who had been deputed, under section 23 of Act XIV of 1869, to assist him. The Second Class Subordinate Judge passed an order sanctioning execution; but the defendant appealed from that order, and it was reversed by the District Judge.

*Second Appeal, No. 212 of 1885.

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The plaintiff now preferred a second appeal to the High Court, and contended, for the first time, that the Second Class Subordinate Judge had no power to deal with the execution of the decree, which had been transferred to him by the First Class Subordinate Judge. The defendant contended that the plaintiff's objection to the jurisdiction was too late on second appeal.

Viccúji (Pándurang Balibhadra with him) for the appellant:—The First Class Subordinate Judge, who had passed the decree, and to whom application had been made, ought not to have transferred the execution to the Joint Second Class Subordinate Judge, as the subject-matter of the suit was over Rs. 5,000. The Second Class Subordinate Judge was appointed under section 23 of Act XIV of 1869, and his jurisdiction could be invoked only in matters within his pecuniary jurisdiction, which was limited to Rs. 5,000. The decree in question would be executed without jurisdiction if the order for execution by the Second Class Subordinate Judge were upheld. Though the appellant did not, at first, object to the jurisdiction, he can now object on second appeal. Consent or acquiescence of parties does not give jurisdiction to Courts in matters beyond their jurisdiction—*Bábáji v. Lakshmiábái* (1). An objection to jurisdiction can be taken at any time, and here the appellant applied to the competent Court: he should, therefore, be allowed now to object on second appeal—*Geeasoodin v. Rámchandra Hanmant Risbood* (2); *Nidhi Lal v. Mazhar Husain* (3). If the objection to jurisdiction is patent on the face of the record, it can be taken on second appeal—*Bápuji v. Umedbhai* (4).

Mahádev Chimnáji Apte for the respondent:—The objection to jurisdiction is taken too late. The appellant submitted to the jurisdiction of the Second Class Subordinate Judge when execution was allowed by him to issue, and even took money under the order. He is estopped from objecting now. Here for the first time he objects to the jurisdiction. Objection to jurisdiction cannot be taken on second appeal—*Pándoji v. The Collector of Poona* (5). The Second Class Subordinate Judge was

(1) I. L. R., 9 Bom., 266.

(2) I. L. R., 7 All., at p. 243.

S. A. 323 of 1872, No. 17 of 1872.

(4) 8 Bom. H. C. Rep., 245, A. C. J.

(5) Printed Judgments for 1876, p. 103.

appointed to assist the First Class Subordinate Judge, and the latter could transfer the execution of the decree, and such an act would not be *ultra vires*.

SARGENT, C. J. :—The plaintiff who presented his *darkhást* in the Court of the First Class Subordinate Judge, has taken the objection, that the Subordinate Judge of the Second Class had no jurisdiction to adjudicate on the *darkhást*, the subject-matter both of the suit and of the *darkhást* being above 5,000 Rs. The Subordinate Judge, it appears, had been appointed, under section 23 of Act XIV of 1869, to assist the First Class Subordinate Judge in the disposal of the suits on his file, and was directed by the latter to dispose of the *darkhást* in question. The assistance, however, contemplated by that section could only be afforded within the limits of a Second Class Subordinate Judge's jurisdiction as fixed by section 24 of Act XIV of 1869, and could not, therefore, be invoked by the Subordinate Judge of the First Class, except in matters within his competence. The execution of the decree by section 223 of the Civil Procedure Code belongs to the Court which has pronounced it, and as the Second Class Subordinate Judge could not have entertained the suit, so neither could he deal with it in execution. We, therefore, think that the plaintiff is right in his contention that the Subordinate Judge of the Second Class had not jurisdiction to entertain the *darkhást*.

But it has been urged for the defendant that this objection cannot be taken by the plaintiff, or, at any rate, not on second appeal for the first time. As a general rule, an objection to the jurisdiction, the validity of which is patent on the face of the proceedings, can be taken at any stage of the proceedings—see *Geeasoodin v. Rámchandra Hanmant Risbood*⁽¹⁾ and the remarks of Mahmood, J., in *Nidhi Lal v. Mazhar Husain*⁽²⁾; and as the plaintiff presented his plaint in the proper Court, there seems no sufficient reason why he should not have the same right to object to the jurisdiction of the Judge who tried the case as the defendant would have had had the decision been against him.

We must, therefore, discharge the orders of both the Courts below, and direct that the plaintiff's *darkhást* be disposed of by

(1) S. A. 323 of 1872, No. 17 of 1872.

(2) I. L. R., 7 All., at p. 243.

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the First Class Subordinate Judge. As the plaintiff presented his *darbhást* in the right Court, the parties must pay their own costs throughout up to the present time.

APPELLATE CIVIL.

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

1887.
 August 16.

HARI GOPA'L, (ORIGINAL PLAINTIFF), APPELLANT, v. GOKALDA'S
 KUSHABA'SHET, (ORIGINAL DEFENDANT), RESPONDENT.*

Hindu law—Joint family—Manager—Parties to suit—Practice—Suit by manager alone—Co-parceners made parties on objection by defendant—Civil Procedure Code (Act XIV of 1882), Sec. 30—Amendment of pleadings—Plaint amended in second appeal by adding parties.

The plaintiff as manager of an undivided Hindu family sued to recover possession of certain lands from the defendant. The defendant contended that the plaintiff's minor brother and uncle, who were his undivided co-parceners, should be made parties to the suit. The Court of first instance held that the plaintiff, as manager, could sue alone, and passed a decree for the plaintiff. The first appellate Court reversed the decree, holding that the plaintiff could not sue alone, except under the provisions of section 30 of the Civil Procedure Code, which had not been complied with. On second appeal to the High Court,

Held, that the defendant was entitled to have the plaintiff's uncle and minor brother placed on the record either as co-plaintiffs or as defendants. The right of a plaintiff to assume the character of manager, and to sue in that character, raises a question of fact and law which varies as the other members of the family are minors or adults, and, therefore, the defendant is always entitled in such suits, when the objection is taken at an early stage, to have the other members of the family, when they are known, placed on the record, to ensure him against the possibility of the plaintiff's acting without authority.

The plaintiff was allowed on second appeal to amend his plaint by making the other members of the family parties to the suit.

SECOND appeal from a decision of Ráv Bahádur K. B. Bal, First Class Subordinate Judge with appellate powers at Thána.

The plaintiff as manager of an undivided Hindu family sued the defendant to recover possession of certain lands. The defendant contended that the plaintiff's minor brother and uncle, who were his co-parceners, should be made parties in the suit as co-plaintiffs.

* Second Appcal, No. 375 of 1885.