

able—*Gházíidin v. Fakir Bakhsh*⁽¹⁾; *Udeyadeta Deb v. Gregson*⁽²⁾; *Luchmeeput v. Sitá Náth*⁽³⁾; *Rangji v. Bháiji*⁽⁴⁾.

Ganpat Sadáshiv Ráo, contra.—This is not a reference under section 617 of the Civil Procedure Code. The lower Court wants a mere direction of the High Court as to the taking of security ordered by this Court. Even assuming that it is a reference under section 617, still the lower Court should be considered as proceeding under section 545, and any order that may be passed under that section is not appealable under section 588 of the Code. A reference, therefore, will lie, such an order being final.

SARGENT, C. J.:—The question as to the amount of security to be given by the defendant as the condition of the stay of execution of the decree against him was a question now “relating to execution” within the contemplation of section 244 of the Civil Procedure Code, and, therefore, an order determining that question would be appealable under section 2 of the Civil Procedure Code—*Gházíidin v. Fakir Bakhsh*⁽⁵⁾; *Udeyadeta Deb v. Gregson*⁽⁶⁾. No reference, therefore, lies to this Court under section 617, even assuming that section to apply to a proceeding of this nature under section 647. Plaintiffs to pay defendant his costs.

(1) I. L. R., 7 All., 73.

(4) I. L. R., 11 Bom., 57

(2) I. L. R., 12 Calc., 624.

(5) I. L. R., 7 All., 73.

(3) I. L. R., 8 Calc., 477.

(6) I. L. R., 12 Calc., 624.

APPELLATE CIVIL.

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

RA'MPRATA'P, PLAINTIFF, *v.* GANESH RANGNA'TH, DEFENDANT.*

Jurisdiction—Subordinate Judge invested with Small Cause Judge's powers—Civil Procedure Code (Act XIV) of 1882, Sec. III—Set-off exceeding pecuniary jurisdiction of the Small Cause powers of the Subordinate Judge—Practice.

1887.

June 27.

In a suit brought by the plaintiff to recover Rs. 36-7-9 from the defendant, under the Small Cause jurisdiction of a Subordinate Judge, the defendant claimed to set off Rs. 72, which exceeded the pecuniary jurisdiction of the Judge as a Small Cause Judge. On reference to the High Court,

Held, that the set-off might be pleaded by the defendant. The Judge would exercise his Small Cause Court jurisdiction in trying the claim of the plaintiff and his ordinary jurisdiction in trying the set-off.

* Civil Reference, No. 4 of 1887.

1887.
MAHANT
ISHWARGAR
v.
CHUDASAMA
MANABHAI.

1887.

RAMPRAJ
v.
GANESH
RANGNATH.

THIS was a reference by Rāv Sāheb Karpurrām Manmathrām, Subordinate Judge of Panvel, under section 617 of the Civil Procedure Code (Act XIV) of 1882.

The plaintiff sued to recover from the defendant Rs. 33-7-9, being the price of two cases of clarified butter bought by the defendant on the 6th April, 1886; Re. 1-12 as interest thereon at the rate of 12 annas *per cent. per mensem*; and Rs. 1-3-6, the cost of a notice given to the defendant. The defendant entered his appearance, and put in a written statement admitting the claim, but claiming a set-off of Rs. 75.

The Subordinate Judge referred the following question to the High Court for its opinion:—

Whether a defendant has a right to set off a sum exceeding Rs. 50 in a suit which is within the Small Cause Court jurisdiction of his Court?

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

Ghanashām Nilkanth Nādkarni for the plaintiff:—The set-off claimed by the defendant exceeds the pecuniary jurisdiction of the Subordinate Judge as a Small Cause Judge, and he cannot try the question of set-off. If the defendant proved his set-off, the effect would be the same as if he obtained a decree: see clause 3 of section 111 of the Code. But the Small Cause Court jurisdiction of the Subordinate Judge is limited to Rs. 50; therefore, the set-off can only be proved to that amount.

Vāsudev Gopāl Bhandārkar for the defendant:—The Subordinate Judge, who has been invested with Small Cause Court powers, exercises two separate jurisdictions: first, that of a Small Cause Court Judge; second, that of a Subordinate Judge—*Bālkrishna v. Lakshman*⁽¹⁾. Under the first he can try the claim of the plaintiff, and under the second he can try the set-off of the defendant.

SARGENT, C. J.:—We think there is no objection to the Subordinate Judge trying the set-off pleaded by the defendant. He is not the Judge of two Courts, but has two jurisdictions—*Malhāri*

(1) I. L. R., 3 Bom., 219.

v. *Narso Krishna*⁽¹⁾—and will exercise his Small Cause Court jurisdiction in trying the claim made by the plaintiff and his ordinary jurisdiction in trying the set-off; and as he is governed by the Code of Civil Procedure in his procedure—*Bhagwan Dayalji v. Balu*⁽²⁾—he will set off the one debt against the other as provided by section 111.

(1) I. L. R., 9 Bom., 174.

(2) I. L. R., 8 Bom., 231.

1887.

RAMPERSAD
v.
GANESH
RANGNATH.

APPELLATE CIVIL.

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

GOVINDRA'V AND ANOTHER, (ORIGINAL PLAINTIFFS), APPELLANTS, v.
RA'VJI AND ANOTHER, (ORIGINAL DEFENDANTS), RESPONDENTS.*

1887.
July 5.

Mortgage—Subsequent assignment of the equity of redemption by the mortgagor—No notice to mortgagees of such assignment—No change of name in Collector's books—Further advances by mortgagees to original mortgagor on same security—Suit by assignee of equity of redemption to redeem—Liability of assignee to pay off the further advances to mortgagor—Standing by—Allowing original mortgagor's name to remain in Collector's books.

In order to complete an assignment of an equitable estate in immoveable property it is not necessary by English law that notice of the assignment should be given to the owner of the legal estate. Nor is there any rule of Hindu law which requires notice to be given to the person in possession whose position may be considered analogous to the holder of the legal estate in English law.

By a registered mortgage-deed, P. in 1869 mortgaged certain property with possession to the defendants. In 1871, P. sold his equity of redemption to the plaintiffs, who allowed it to remain in P.'s name on the Collector's register. Subsequently, in 1873, the defendants made further advances to P. on the security of the same mortgaged property. The plaintiffs sued to redeem. The Court of first instance rejected the plaintiffs' claim, being of opinion that their purchase was not proved. On appeal, the District Judge reversed the decree, holding that the sale to the plaintiffs was proved. He held, further, that the plaintiffs could not redeem without paying off the further advance made by the defendants in 1873, on the ground that the plaintiffs had given no notice of their purchase to the defendants, and had allowed Pádoji's name to remain on the Collector's register as the ostensible owner.

The plaintiffs appealed to the High Court.

Held, that the plaintiffs' title as assignee of the equity of redemption was complete, although no notice of the assignment had been given to the defendants.

* Interlocutory judgment in Appeal, No. 200 of 1885