

APPELLATE CIVIL.

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

1887.
June 23.

MAHANT ISHWARGAR, (ORIGINAL DEFENDANT), APPLICANT, v. CHU-
DASAMA MANA'BHAI AND OTHERS, (ORIGINAL PLAINTIFFS), OPPONENTS.*

Civil Procedure Code (Act XIV) of 1882, Secs. 2, 244 and 617—Decree—Stay of execution—Amount of security required on granting stay of execution a question in execution and order thereon appealable.

The defendant in a redemption suit, against whom a decree had been passed, appealed to the High Court, which on his application granted the usual stay of execution pending the appeal, upon security being given by him. The Subordinate Judge, feeling doubt as to whether the actual value of the property or the value stated in the plaint should be regarded in fixing the security, referred the case to the High Court under section 617 of the Civil Procedure Code (Act XIV) of 1882.

Held, that no reference would lie under section 617 of the Civil Procedure Code. The question as to the amount of the security was a question relating to execution as contemplated by section 244 of the Code, and, therefore, an order determining that question would be appealable under Section 2 of the Code.

THIS was a reference by Khán Bahádur Burjorji Edalji Modi, First Class Subordinate Judge of Ahmedabad, under section 617 of the Civil Procedure Code (Act XIV) of 1882.

In a redemption suit by the plaintiffs, a decree was passed holding the property redeemable on payment of a certain amount. The decree was appealed against by the defendant to the High Court, which granted a stay of execution on security being given by the defendant. The Subordinate Judge, feeling doubt as to which of the two amounts—*viz.*, (1) that stated in the plaint or the (2) actual value of the property—was to form the basis for the security, referred the question to the High Court under section 617 of the Civil Procedure Code (Act XIV) of 1882.

Ráv Sáheb Vásudev Jagannáth Kirtikar for the defendant:— This is a question in an execution proceeding, and cannot be referred under section 617 of the Civil Procedure Code. Any order passed by the lower Court in this matter would be appeal

* Civil Reference, No. 15 of 1887.

able—*Ghāzidin v. Fakir Bakhsh*⁽¹⁾; *Udeyadeta Deb v. Gregson*⁽²⁾; *Luchmeeput v. Sitā Nāth*⁽³⁾; *Rangji v. Bhāiji*⁽⁴⁾.

Ganpat Sadāshiv Rāo, 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—*Ghāzidin 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 Nānābhāi Haridās.*

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.