APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ranade.

1896.
January 7.

MULLA ABDUL HUSSEIN (ORIGINAL PLAINTIFF), APPELLANT, *v.* SAKHINABOO AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Civil Procedure Code (Act XIV of 1882), Secs. 223 and 239—Transfer of decree—Execution of decree—Power of Court executing a decree sent for execution.

Where a decree is passed by one Court and sent to another Court for execution, the Court executing the decree cannot question the propriety of the order transferring the decree to such Court for execution.

SECOND appeal from the decision of T. Hamilton, District Judge of Surat.

Suit to declare property liable to attachment.

The plaintiff obtained a decree for Rs. 250 against one Salebhai in the Court of Small Causes at Bombay (No. 32126 of 1890). It was transferred for execution to the Court at Surat under section 31 of Act XV of 1882, and certain immoveable property in Surat was attached in execution. The defendants thereupon applied for the removal of the attachment, alleging that the property was theirs, and the Court granted their application. The plaintiff now brought this suit in the Court of the First Class Subordinate Judge of Surat for a declaration that the property at Surat was liable to attachment in execution of his decree against Salebhai.

At the trial it appeared that Salebhai was the plaintiff's stepson, and evidence was given that Salebhai had property in Bombay of the value of Rs. 10,000.

The First Class Subordinate Judge found that the property which had been attached did not belong to Salebhai, and he, therefore, dismissed the suit.

The plaintiff appealed, and the appellate Court confirmed the decree on the grounds stated in the following passages from its judgment:—

"The decree which plaintiff seeks to execute was obtained in the Court of Small Causes in Bombay. His judgment-debtor is his own stepson and the decree was passed by default.

* Second Appeal, No. 285 of 1895.

"The said stepson has admitted that he has property worth some Rs. 10,000 in Bombay. The decree in question is for Rs. 250 only. The darkhást shows that no attempt has been made to satisfy that decree out of the Bombay property, and, therefore, no execution can be taken out here. The suit must fail on this account alone."

Plaintiff preferred a second appeal to the High Court.

Lallubhai A. Shah for the appellant (plaintiff) :—The question before the lower Court was merely whether the property in question was the property of Salebhai. If it was, the Court at Surat is bound to execute the decree which was transferred to it for execution. It could not consider the propriety or otherwise of executing it against any particular portion of Salebhai's property —*Beerchunder* v. *Maymana Bibee*[1] ; *Shib Narain* v. *Gobind Doss*[2]; Civil Procedure Code (Act XIV of 1882), Sections 223, 223 B and 239.

N. M. Samarth for the respondent :—Section 31 of the Presidency Small Cause Courts Act (XV of 1882) provides that a decree of the Court may be transferred to another Court for execution only when the judgment-debtor has not, within the local limits of the jurisdiction of the Court which passed the decree, moveable property sufficient to satisfy the decree. Here the judgment-debtor Salebhai has in Bombay property worth more than Rs. 10,000. It was wrong, therefore, to transfer the decree under section 31 of that Act for execution to another Court. See *Haji Musa* v. *Purmanand*[3] and *Imdad Ali* v. *Jagan Lal*[4]. The District Judge, therefore, was right in holding that no execution could be taken out in Surat while there was sufficient property in Bombay to satisfy the decree.

JARDINE, J. :—The Presidency Court of Small Causes empowered under section 31 of Act XV of 1882 so to do, sent the decree for execution to the Court of Surat, which under the same section had to follow the Code of Civil Procedure (Act XIV of 1882). The District Judge, on the mere statement of the judgment-debtor, not a party to the execution proceeding before him, held that the debtor had sufficient property in Bombay : as if such a question could be inquired into twice over, first in Bombay and then at Surat. Then the District Judge gives as his sole reason for

(1) I. L. R., 5 Cal., 736.
(2) 23 Cal. W. R., 155.
(3) I. L. R., 15 Bom., 216.
(4) I. L. R., 17 All., 473.

1896.

MULLA ABDUL HUSSEIN v. SAKHINABOO.

dismissing the application—"the darkhást shows that no attempt has been made to satisfy that decree out of the Bombay property, and, therefore, no execution can be taken out here." This curt statement is not a proper judgment. The District Judge ought to have considered the statutes as interpreted by the decisions.

Section 223 of the Civil Procedure Code required the Surat Court to certify to the Bombay Court the fact of execution or the reasons of failure. This is inconsistent with a power to refuse to execute the decree on the ground that the proceedings of the Bombay Court were irregular or mistaken. The cases cited in support of the District Judge's order—*Haji Musa* v. *Purmanand*[1] and *Imdád Ali* v. *Jagan Lal*[2]—relate to decrees passed without jurisdiction, and are irrelevant to questions of mere procedure. Although it is unnecessary to consider section 239, we may refer to *Beerchunder* v. *Maymana Bibee*[3] and *Shib Norain* v. *Gobind Doss*[4] as showing the limits of the function of the Court to which the decree has been transferred.

For these reasons the Court sets aside the decree of the District Judge and remands the cause to the District Court for disposal according to law. Costs of this appeal on the respondents; other costs to abide the result.

Case remanded.

(1) I. L. R., 15 Bom., 216.
(2) I. L. R., 17 All., 478.
(3) I. L. R., 5 Cal., 736.
(4) 23 Cal. W. R., 155.

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice and Mr. Justice Parsons.

1896. *January* 7.

GOPAL HARI JOSHI RAIRIKAR (ORIGINAL PLAINTIFF), APPELLANT, *v.* RAMAKANT RANGNATH JOSHI RAIRIKAR AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Partition—Inám village—Right of management.

Property consisting of an ordinary inám village and a cash allowance payable out of the revenue of another village is liable to partition at the suit of a co-sharer, except when it is held on saranjám or other impartible tenure, or where the terms of the

*Appeal, No. 37 of 1891.