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question. Clearly, if that allegation was proved, and if the applicant had validly been created the trustee of the son, no order could have been passed directing the applicant to hand over property to the creator of the trust in breach of that trust. I would make the rule absolute, but as my learned colleague differs from the view taken by the District Judge as to his power to make the order under Act XX of 1864, in which view I am inclined to concur, this Court simply reverses the order of the District Judge as made without jurisdiction under the Guardians and Wards Act, 1890, leaving it open to the opponent to move the District Court under Act XX of 1864, if so advised. The opponent must pay the applicant's costs that have been incurred in this and the District Court.

Order reversed.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Telang.

1892,
 October 5.

VITHALRA'O, (ORIGINAL DEFENDANT No. 5), APPELLANT, v. VA'GHOJI,
 (ORIGINAL PLAINTIFF), RESPONDENT.*

Civil Procedure Code (Act XIV of 1882), Sec. 16—Suit to recover mortgage-debt by sale of mortgaged property out of jurisdiction—Jurisdiction.

A suit by a mortgagee to recover the mortgage-debt from the mortgagors personally, as well as by sale of the mortgaged property, is one falling within clauses (c) or (d) of section 16 of the Code of Civil Procedure (Act XIV of 1882), and can only be instituted in that Court within the local limits of whose jurisdiction the mortgaged property is situate.

A Court has no jurisdiction to entertain such a suit relating to property situate outside the local limits of its jurisdiction.

APPEAL from the decree of Ráo Bahádur Chuniál Máncklál, First Class Subordinate Judge of Poona, in Suit No. 84 of 1889.

The plaintiff sued to recover Rs. 7,886-2-9 on a mortgage-bond executed by defendants Nos. 1 and 2 on 28th May, 1874.

* Appeal No. 37 of 1891.

Subsequently to the date of the mortgage a money decree was obtained by a third person against defendant No. 1, and in execution of that decree the mortgaged property was put up to sale and purchased by defendant No. 5.

The plaintiff prayed for a decree against the defendants personally and for sale of the mortgaged property.

The property was situate in the Sachin State outside British India. The defendants 1 and 2 (the mortgagors) were also residents of the Sachin State. But as defendant No. 5, the auction-purchaser of the equity of redemption, was a resident of Poona, the suit was filed in the Court of the First Class Subordinate Judge at Poona.

The defendants pleaded (*inter alia*) that the Court had no jurisdiction to entertain the suit.

The Subordinate Judge, following the ruling in *Yenkoba v. Rambhaji*⁽¹⁾, held that the suit would lie, as one of the defendants resided within the jurisdiction of the Court. He awarded the plaintiff's claim for Rs. 7,000 against the mortgaged property only.

Against this decision the defendant No. 5 appealed to the High Court.

Jardine (with him *Mahádeo Chimnaji Apté*) for appellant:—This is a suit by a mortgagee to enforce his mortgage lien by sale of the mortgaged property. The mortgaged property is situate in a foreign State. The Court below had, therefore, no jurisdiction to entertain this suit. Such a suit can only be brought in that Court within whose local jurisdiction the property is situate. The words of section 16 of the Code of Civil Procedure (Act XIV of 1882) are clear. This section of the Code differs from section 5 of Act VIII of 1859 under which *Yenkoba v. Rambhaji*⁽¹⁾ was decided. That decision has no application to the present case.

Branson (with him *Ráo Sáheb Vúsudev J. Kirtikar*) for respondent:—The decree is a mere declaratory decree. It does not pass any order for sale of the property mortgaged. Refers to *Deo Chand Sahoo v. Teeluck Singh*⁽²⁾.

(1) 9 Bom. H. C. Rep., 12.

(2) 14 W. R., 238.

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PARSONS, J. :—This suit was brought on a mortgage, executed by the defendant No. 1, to recover the mortgage-debt by the sale of the mortgaged property which had passed into the possession of the defendant No. 5 by purchase. The defendant No. 1 was a resident of a Native State, and the mortgage was executed, and the property was situated, in the same Native State. As, however, the defendant No. 5 was a resident of Poona, the Subordinate Judge, on the strength of the decision in *Yenkoba v. Rambhájí*⁽¹⁾, held that he had jurisdiction, and awarded the claim for Rs. 7,000 and costs against the mortgaged property.

We think that he had no jurisdiction. The language of section 5 of Act VIII of 1859 is not the same as that of section 16 of the Code of Civil Procedure, 1882. The former mentioned only "suits for land or other immoveable property." The latter enumerates six different descriptions of suits, and among them are suits (*c*) for the foreclosure or redemption of a mortgage of immoveable property and suits (*d*) for the determination of any other right to, or interest in, immoveable property. We think that this suit falls within one or other of these descriptions, and can, therefore, be instituted only in the Court within the local limits of whose jurisdiction the property is situate. We are supported in this view by the decision of the Allahabad High Court in *Gudri Lal v. Jagannáth Rám*⁽²⁾. In the present case the property is not even situate in British India. Moreover, the relief sought can in no way be obtained by the personal obedience of the defendant No. 5, since he is not personally liable for the claim. The relief sought can only be had by proceeding against the property.

We reverse the decree of the Subordinate Judge, and order that the plaintiff's suit be dismissed as against the appellant with costs throughout.

Decree reversed.

(1) 9 Bom. H. C. Rep., 12.

(2) I. L. R., 8 All., 117.