

1897.

TRIMBAK
v.
KASHINATH.

ruling in *Dwarkanath v. Anandrao* (*supra*). Nor do we consider it necessary to consider whether an application should not be presumed under the circumstances from the order of the 17th January, 1893, as we are clearly of opinion that the payment of the Rs. 100 with the acknowledgment of liability by the defendant's pleader, when he asked for time, is quite sufficient for the provisions of section 19 of the Limitation Act, to take the subsequent application out of purview of the statute. The decisions upon this point are, we believe, uniform—*Venkatray Bapu v. Bijesing*⁽¹⁾; *Muhammad v. Payag Sahu*⁽²⁾; *Toree Mahomed v. Mahomed Mabood*⁽³⁾; *Norendra v. Bhupendra*⁽⁴⁾.

We set aside the decree of the District Judge, and restore that of the Subordinate Judge, with costs in both Courts of appeal upon the present respondent.

(1) I. L. R., 10 Bom., 108.

(3) I. L. R., 9 Cal., 730.

(2) I. L. R., 16 All., 228.

(4) I. L. R., 23 Cal., at p. 387.

APPELLATE CIVIL.

Before Sir C. F. Farrer, Kt., Chief Justice, and Mr. Justice Tyabji.

DUNGARSI DIPCHAND (ORIGINAL PLAINTIFF), APPLICANT, v. UJAMSI VELSI AND ANOTHER (ORIGINAL DEFENDANTS), OPPONENTS.*

1897.

March 31.

Award—Decree—Consent decree—Application by creditor of defendant to be made a party to suit—Objection by creditor to filing award—Practice—Procedure—Civil Procedure Code (Act XIV of 1882), Sec. 484.

The plaintiff applied to file an award and for a decree in terms thereof, to which the defendant consented. K., a creditor of the defendant, thereupon applied to be made a party to the suit and objected to the filing of the award and to the decree, alleging that the award was fraudulent and fictitious and had been made in order to save the defendant's property from his creditors. The Subordinate Judge made K. a party to the suit and refused the plaintiff's application. On application to the High Court,

Held, that K. ought not to have been made a party to the suit. His remedy was to apply under section 484 of the Civil Procedure Code (Act XIV of 1882) for an attachment before judgment of the defendant's property.

* Application, No. 251 of 1896 under the Extraordinary Jurisdiction.

1897.

DUNGARSI

v.

UJANSI.

Held, also, that the Judge was bound to file the award, the defendant having raised no objection to it and no illegality appearing on the face of it.

APPLICATION under the extraordinary jurisdiction of the High Court, (section 622 of the Civil Procedure Code Act XIV of 1882), against the order of Ráo Sáheb Tribhovandas Lakshmidas, Subordinate Judge of Dhandhuka and Gogha, in the Ahmedabad District.

The plaintiff applied to the Subordinate Judge to file an award and to pass a decree in terms thereof. The award in question directed the defendant to pay the plaintiff Rs. 2,372. The defendant admitted the award and consented to the decree.

One Keshavlal Vundravan, however, applied to be made a party to the proceedings and contended that the plaintiff's application should be rejected on the ground that the award was fictitious and fraudulent and was made merely for the purpose of saving the defendant's property from his creditors and to defeat the execution of certain decrees which he (Keshavlal) and others expected to obtain in suits which they had filed against the defendant.

The Subordinate Judge granted Keshavlal's application and made him a party-defendant to the suit. He rejected the plaintiff's application and refused to file the award, or to pass a decree in its terms.

The plaintiff applied to the High Court under its extraordinary jurisdiction and obtained a rule calling on the defendants to show cause why the order of the Judge should not be set aside.

Ghanasham N. Nadkarni appeared for the applicant (plaintiff) in support of the rule.

Sitanath G. Ajinkya appeared for the opponent (defendant No. 2) to show cause.

FARRAN, C. J.:—We think that it is clear that the defendant No. 2 ought not to have been made a party to the attachment proceedings or allowed to contest the award. He had no *locus standi* whatever. If he thought that the award proceedings were a device on the part of the defendant Ujansi to protect his property from his creditors, including the defendant No. 2, and that

the defendant Ujamsi was about to allow his property to be attached for that purpose in pursuance of a fraudulent decree, his remedy was to apply under section 184 for an attachment before judgment of defendant No. 1's property. That course is still open to him. As the defendant No. 1 raised no objection to the award, the Subordinate Judge was bound to file it, no illegality appearing on its face. We must direct the Subordinate Judge now to do so. The award would not have prejudiced the defendant No. 2 if he had not intervened in the suit. This order will also be without prejudice to his rights. Rule absolute.

Rule made absolute.

APPELLATE CIVIL.

Before Sir C. F. Farran, Kt., Chief Justice, and Mr. Justice Tyabji.

MAHOMED NATHUBHAI (ORIGINAL PLAINTIFF), APPLICANT, *v.* HUSEN
AND OTHERS (ORIGINAL DEFENDANTS), OPONENTS.*

1897.

March 31.

Jurisdiction—Small Cause Court—Subscription for building a temple—Person receiving such subscriptions—Trustee—Practice—Civil Procedure Code (Act XIV of 1882), Sec. 30.

A person collecting and receiving subscriptions for the purpose of building a temple, in pursuance of a resolution come to at a meeting of the community, holds them in the capacity of a trustee, and a suit in respect thereof should be filed, under section 30 of the Civil Procedure Code (Act XIV of 1882), in a Subordinate Judge's Court and not in a Small Cause Court.

APPLICATION under the extraordinary jurisdiction of the High Court, section 622 of the Civil Procedure Code (Act XIV of 1882).

The plaintiff sued to recover Rs. 368-10-11 from the defendants, who were the heirs of one Kassum Gulab, under the following circumstances :—

At a meeting held in November, 1889, by the Mahomedan Vepari (trading) panchayat of the Katpore market at Broach, it was resolved that a subscription be raised to build a *dehera* (temple) over the *dargah* of Pir Latifshah at Broach. The

* Application, No. 23 of 1897, under the Extraordinary Jurisdiction.