1896.

VARAJLAL v. KACHHA.

but none were pointed out by Mr. Arathoon which would afford a suitable remedy or which would preclude such an action as the present." The opponent's course, if he desired the matter to be summarily disposed of, was to have taken steps under section 278 to have the attachment on the box raised. By paying the amount of the decree into Court he has entailed upon himself the necessity of filing a suit if he desires to recover it.

Rule absolute to set aside the order as made without jurisdiction. The applicant is entitled to his costs.

Rule made absolute.

APPELLATE CIVIL.

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

CHINTAMAN BIN VITHOBA (ORIGINAL DEFENDANT), APPELLANT, *v.* CHINTAMAN BAJAJI DEV AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

1896. *September* 24.

Decree—Execution—Powers of Court in executing decree—Code of Civil Procedure (Act XIV of 1882), Sec. 244.

The validity of a decree of which execution is sought cannot be disputed in execution proceedings under section 244 of the Code of Civil Procedure (Act XIV of 1882).

APPEAL from the decision of G. Jacob, District Judge of Poona, in darkhást No. 7 of 1893.

In 1874 one Chintaman Bajaji succeeded to the office of manager and trustee of the Chinchwad Savasthán.

In 1880 he instituted Suit No. 1 of 1880 in the Court of the District Judge of Poona against Chintaman bin Vithoba to obtain a declaration that certain mortgages of savasthán property made to the said Chintaman bin Vithoba by Lakshmibai, one of the widows of Dharnidhar the predecessor of Chintaman Bajaji as trustee and manager of the Chinchwad Savasthán, were not binding upon him.

That suit was settled by a consent decree passed on the 13th July, 1880, by which the defendant Chintaman bin Vithoba was to be paid Rs. 23,000 and interest, by annual instalments of

*Appeal, No. 32 of 1895.

1896.

CHINTAMAN VITHOBA v. CHINTAMAN BAJAJI.

Rs. 2,000, out of the revenues of the village of Mán, which was part of the savasthán property.

Subsequently Chintaman Bajaji was removed from the office of manager and trustee of the savasthán under a decree of the District Court of Poona, and other trustees were appointed. This decree was, on appeal, confirmed by the High Court. See *Chintaman Bajaji Dev* v. *Dhondo Ganesh Dev*[1].

Chintaman bin Vithoba, in execution of the consent decree in Suit No. 1 of 1880, received Rs. 2,000 a year from the revenues of the village of Mán till the beginning of 1891-92. Payment was then withheld. He died, and in 1893 Sadashiv and Vinayek, his sons and heirs, presented a darkhást (No. 7 of 1893) to the District Court of Poona, praying for an order for the attachment of the revenues of the village of Mán and for payment from them of Rs. 2,195-8-2 in further execution of the decree in Suit No. 1 of 1880.

The trustees of the Chinchwad Savasthán, having been served with notice of the application, objected to the execution of the decree, contending (*inter alia*) that Lakshmibai had no authority to execute the mortgages upon which the consent decree was based; that Chintaman Bajaji had no authority to consent to the decree; and that the consideration for the mortgages had not been paid into the savasthán, and had not been applied for purposes of the devasthán.

For the decree-holders it was argued that those objections could not be taken in execution proceedings under section 244 of the Civil Procedure Code (Act XIV of 1882).

The District Judge held that the objections could be taken in execution proceedings, and upon consideration of the objections rejected the darkhást.

Against this decision the decree-holders appealed to the High Court.

Macpherson (with him *Mahadeo Bhaskar Chaubal*) for the appellant (decree-holder):—We are entitled to have the decree executed. The present trustees cannot question the validity of the acts of Chintaman Bajaji, who was the former trustee

[1] I. L. R., 15 Bom., 612.

money) I will pay off the whole amount according to the above agreement. Should I not pay the same, you are to recover the same in full from the mortgaged property." The effect of such a stipulation has been considered in *Sayad Abdul Hak* v. *Gulam Zilani*[1], and it has been there held that the stipulation postponing the mortgagor's right to redeem beyond the time when the mortgagee can call in his money is inoperative. The present case shows the desirability of such a rule. What advantage can it possibly be to the ladies here that they should be able to redeem ...r fifty years and remain all that time liable to pay the mortgage-money whenever it may please the mortgagee to demand it. 1896. SARI v. MOTIRAM.

As the appeal before the Subordinate Judge, First Class, A. P., was heard *ex parte*, his attention was not called to the above ruling. No reasons have been assigned before us why we should not follow it. We consider, therefore, that we are bound to do so.

We must reverse the decree of the Subordinate Judge and remand the appeal that he may take the accounts and allow ...ntiffs to redeem on the usual terms. Costs, costs in the

Decree reversed and case remanded.

(1) I. L. R., 20 Bom., 677.

APPELLATE CIVIL.

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

GANESH ... OZE (original Plaintiff), Appellant, *v.* The ...RY of State for India in Council (original Defendant), ...ondent.* 1896. August 6.

...ct (Bom. Act VII of 1879), Sec. 48[1]—*Revenue Jurisdiction* ... 1876), *Sec.* 4 (*b*)[2]—*Water-rate—Incidence—Land revenue—* ...—*Percolation of the water—Opinion of the canal officer—* ...—*Jurisdiction.*

...rate is levied under section 48 of the Irrigation Act (Bom. Act ... The question as to the jurisdiction of civil Courts in a suit for the

* Appeal, No. 22 of 1895.

... the Irrigation Act (Bom. Act VII of 1879) :—

... appear to a canal officer duly empowered to enforce the provisions ... at any cultivated land within two hundred yards of any canal

...ake ... the irr... iff's lan... The P... he had ... that the ... canal, an... the claim... The plai... *Inverari...* (plaintiff) : ... tain the suit ... contend that ... canal, and su... pay assessme... the *na'la*. ... it is thence ... " surface flow... Ráo Sáheb ... respondent (de...