

1903.

DATTARAM
v.
VINAYAK.

6. The amount due on a moiety of Potle if paid by plaintiff and defendants 4 and 5, as directed in para. 1 of this decree, should be kept in Court and appropriated as aforesaid in the accounts hereby ordered to be taken between defendant 1 or his representative defendant 2 and defendant 3. Parties to be at liberty to apply.

7. Each party to bear his own costs of these appeals and the costs of the suit.

Decree varied.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Aston.

1903.

September 17.

SAYADKHAN PYARKHAN (PLAINTIFF) v. B. S. DAVIES (DEFENDANT).*

Civil Procedure Code (Act XIV of 1882), section 268—Decree—Execution—Salary of Railway servant—Disbursing officer outside the jurisdiction of the Court—Prohibitory order—Jurisdiction.

The judgment-debtor, a railway servant, resided within the local limits of the jurisdiction of the Small Cause Court at Bhusával, which passed the decree. The disbursing officer of the Railway Company resided at Bombay, outside its jurisdiction; but the salary was every month paid to the judgment-debtor at Bhusával by the disbursing officer, through his subordinate. The Court at Bhusával issued to the disbursing officer a prohibitory order, under section 268 of the Civil Procedure Code (Act XIV of 1882), against the salary of the judgment-debtor.

Held, that the Court at Bhusával had no jurisdiction to attach the salary of the judgment-debtor by a prohibitory order issued to the disbursing officer under section 268 of the Civil Procedure Code (Act XIV of 1882).

Abdul Gafur v. W. J. Albyn (1) followed.

THIS was a reference made by V. N. Rahurkar, Subordinate Judge of Bhusával, exercising the powers of a Small Cause Court Judge, under section 617 of the Code of Civil Procedure (Act XIV of 1882).

The facts giving rise to the reference, and the opinion of the Subordinate Judge on the question referred, appear from his statement which was as follows:—

* Civil Reference No. 10 of 1903.

(1) (1903) 30 Cal. 713.

(1) One Sayadkhan obtained a decree in Small Causes suit No. 117 of 1903 for Rs. 131 and costs against one Mr. B. S. Davies, a guard employed at Bhusával, a railway station on the G. I. P. Railway, within the jurisdiction of the Court. On the 9th of July, 1903, he applied for the execution of the decree and prayed for the attachment of the moiety of the judgment-debtor's salary for the month of June, 1903, and of subsequent months until the satisfaction of the entire decretal debt. The judgment-debtor resided and worked for gain principally at Bhusával which is his head-quarters. He draws Rs. 100 per month. The disbursing officer of the G. I. P. Railway Company resided in Bombay. Every month the salary is paid to the judgment-debtor at Bhusával by the disbursing officer through his subordinate. A prohibitory order under section 268, Civil Procedure Code, against the salary of the judgment-debtor was sent to the disbursing officer in Bombay. It was received by him on the 3rd of August, 1903, after the salary for the month of June was paid to the judgment-debtor. The salary for the month of July was then due on the 1st of August, but was not paid to the judgment-debtor. The prohibitory order was returned by the disbursing officer on the ground that the Court had no jurisdiction to pass the order and that the machinery of section 223, Civil Procedure Code, should have been adopted.

(2) The point on which doubt is entertained :

“A railway servant resides, works for gain and receives his salary within the local jurisdiction of the Court that passed the decree. The disbursing officer holds his office beyond the local jurisdiction of that Court. Can the Court attach the salary that fell due and that was to fall due by a prohibitory order, under section 268, issued to the disbursing officer ?”

(3) My opinion on the said point is in the affirmative.

(4) Reasons for the opinion.

The Court passing the decree can attach the salary by a prohibitory order under section 268, Civil Procedure Code, if the salary is within the jurisdiction of the Court. A salary is within the jurisdiction of the Court when it is payable within its jurisdiction. In the absence of any evidence to the contrary, the salary of a railway servant is payable at the head-quarters,

1903.

SAYADKHAH
B. S. DAVIES.

1903.

SAXADKHAN

v.
B. S. DAVIES.

where he principally resides and works for gain, and not at the place of the office of the disbursing officer. There is no ruling of the Bombay High Court on the point under consideration. The facts in *Bungo Jairam v. Balkrishna Vithal* ⁽¹⁾ and in *Parbati Charan v. Panchanand* ⁽²⁾ were different. In these cases the judgment-debtor and disbursing officer resided beyond the local jurisdiction of the Court. The Calcutta case of *Abdul Gafur v. W. J. Albyn* ⁽³⁾ is almost on all fours with the case under consideration. I say almost because the prohibitory order in that case was served through the Small Cause Court, Calcutta, within whose jurisdiction the disbursing officer resided. The ruling in this case is against the opinion expressed by me. The principle of the ruling is that the salary becomes due to the servant, month by month, at the place where the disbursing officer has his office (*vile* page 716 *idem*). With all due deference to their Lordships I am humbly of opinion that the salary becomes payable at the place where the servant resides and works for gain. The disbursing officer may hold his office at any place according to the convenience of the Railway administration. The servant is not required to go to the office of the disbursing officer to receive his pay, but the disbursing officer through his deputy goes to the place where the salary is payable. Having regard to this recent Calcutta decision I entertain doubt as regards the correctness of my opinion. The question is of general importance and of frequent occurrence in this Court. The decree under execution is a decree passed by me as a Small Cause Court Judge and is final. I therefore think it necessary to refer, under section 617, Civil Procedure Code, the above mentioned point to the Honourable High Court for its decision.

J. R. Gharpure (*amicus curiæ*) for the plaintiff.

B. N. Bhajekar (*amicus curiæ*) for the defendant.

CHANDAVARKAR, J.:—Following the decision in *Abdul Gafur v. W. J. Albyn* ⁽¹⁾ the question referred must, we think, be answered in the negative.

Answer accordingly.

⁽¹⁾ (1887) 12 Bom. 44.

⁽²⁾ (1884) 6 All. 243.

⁽³⁾ (1903) 30 Cal. 713.