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The fact that the Subordinate Judge gave his award in the form of a decree will not make it a decree from which a regular appeal can lie. Nor is it necessary for us to express an opinion as to the steps which plaintiff may be advised to take in order to reap the benefits of the judgment which he holds.

We hold that no appeal lies, and dismiss with costs the appeal filed by defendant.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Parsons, Acting Chief Justice, and Mr. Justice Ranade.

1899. *April* 6.

ISAK (ORIGINAL DEFENDANTS NO. 2), APPELLANT, *v.* KHATIJA (ORIGINAL PLAINTIFF), RESPONDENT.*

Jurisdiction—Civil Procedure Code (Act XIV of 1882), *Sec.* 16, *proviso, and Sec.* 57—*Relief to be obtained by personal obedience of defendants—Property situate outside the jurisdiction of the Court in which the suit is filed—Practice—Procedure.*

The proviso to section 16 of the Civil Procedure Code (Act XIV of 1882) requires not only that the relief sought should be entirely obtainable through the personal obedience of the defendant, but also that the defendant should reside within the jurisdiction of the Court in which the suit is filed.

Held, therefore, that a suit for the determination of an interest in immoveable property, filed in a Court within the jurisdiction of which the property was not situate, did not lie in that Court, as all the defendants did not reside within the jurisdiction of that Court, even though the relief sought could have been obtained through their personal obedience.

Held, also, that in such a case the Judge ought not to dismiss the suit, but return the plaint to be presented to the proper Court under section 57 of the Civil Procedure Code.

APPEAL from an order passed by M. P. Khareghat, District Judge of Ratnágiri, remanding a suit for retrial by Ráo Bahádur V. V. Vagle, First Class Subordinate Judge.

The plaintiff sued in the Court of the First Class Subordinate Judge of Ratnágiri for a declaration that she was the owner of a thirtieth share of the khoti of the village of Uple, which

* Appeal, No. 2 of 1899 from order.

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was situate within the local jurisdiction of the Subordinate Judge of Rájápur, and to have her name entered in the B Statement, a village record, as such sharer, and to recover the profits of the share, and for a declaration that she was entitled to pass kabuláyats to Government, &c., &c. In her plaint she stated that the suit was filed in the Court at Ratnágiri, because all the defendants resided within its jurisdiction and all the reliefs sought could be obtained by their personal obedience to the orders of the Court.

The defendants were twenty-six in all; some of them admitted the plaintiff's claim and others contested her claim on grounds immaterial for the purpose of this report.

The Subordinate Judge dismissed the suit, holding that he had no jurisdiction to entertain it. The following is an extract from his judgment:—

"It is admitted that the village in respect of which the suit is brought is situated within the local jurisdiction of the Rájápur Court. It is plain from the prayers as set out (in the plaint) that this is a suit for the determination of a right to, or interest in, immoveable property. Such a suit under section 16 of the Civil Procedure Code must be instituted in the Court within the local limits of whose jurisdiction the property is situate. This suit ought to have been, therefore, instituted in the Rájápur Court. It is, however, contended by the plaintiff's vakil that the suit was maintainable in this Court, because all the parties reside within the local jurisdiction of this Court and because the relief sought can be entirely obtained through the defendants' personal obedience. *Vide* proviso to the aforesaid section. But, in the first place, all the defendants do not reside within the local limits of this Court's jurisdiction. In the next place, all the reliefs prayed for in this case are not such as can be entirely obtained through the personal obedience of the defendants. It is evident that the determination of the plaintiff's share in the village is the principal relief on which others depend, and this is a relief which cannot be entirely obtained through the defendants' personal obedience. The plaintiff's vakil contended that the entry of the plaintiff's name as a sharer in B register was the principal relief and that the main object of this suit was to compel the defendants to give their consent to that entry. But, in the first place, the prayer is not so worded, and, in the second place, no entry of the plaintiff's name in B register can be effected, nor the defendants be compelled to give their consent to that entry, unless and until the plaintiff succeeds in establishing her right or share which is denied by the principal contending defendants. In any view, the determination of the plaintiff's right to share in the village is the principal relief sought in this case, and this relief cannot surely be obtained through the

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personal obedience of the defendants." I am, therefore, of opinion that neither the proviso nor the decision at I. L. R, 19 Bom., 43 (*Bhikaji* v. *Pandu*) relied upon by the plaintiff is applicable to this case. It is true that in this case the defendants do not take any objection to this Court's jurisdiction—nay, they actually waive their objection. But mere consent of parties cannot clothe this Court with jurisdiction which it does not possess."

On appeal by the plaintiff the Judge reversed the decree and remanded the case for trial on the merits. In his judgment he said:—

"No doubt the village of Uple although in the Ratnágiri táluka for revenue purposes is within the jurisdiction of the Subordinate Judge of Rajápur. But I think in this case the relief sought can be entirely obtained by the personal obedience of the defendants, and, therefore, the suit falls within the proviso to section 16. Some of the defendants objected to the entry of the plaintiff's name in the revenue registers as a co-sharer, and that is why plaintiff has had to file this suit. She asks for a declaration that she is entitled to get her name so entered. She further asks the Court to fix the order in which the co-sharers are to manage the village and an injunction against defendants not to obstruct her when she manages in her turn. None of these reliefs require anything to be done by the Court at the village."

Defendant No. 2 preferred a second appeal.

Manekshah J. Taleyarkhan appeared for the appellant (defendant No. 2):—The District Judge is wrong in holding that the Court at Ratnágiri has jurisdiction. The property in suit is situate within the jurisdiction of the Court at Rájápur and the suit should have been brought there—Civil Procedure Code (Act XIV of 1882), section 16. The plaint states that all the defendants reside within jurisdiction of the Subordinate Judge of Ratnágiri. But the first Court has found that allegation to be incorrect and that all the defendants do not reside within its jurisdiction. The record shows that one of the defendants lives at Thána, some others at Jaitápur and a third at some other place. All these circumstances show that the Subordinate Judge of Ratnágiri had no jurisdiction to entertain the suit—*Keshav* v. *Vinayak*[1].

There was no appearance for the respondent (plaintiff).

PARSONS, C. J. (ACTING):—This suit was one for the determination of an interest in immoveable property, namely, the $\frac{1}{30}$th

(1) (1877) 2 Bom., 22.

share in the village of Uple which was situated within the local limits of the Rajápur Court. It was, however, filed in the Ratnágiri Court, and the District Judge considered that the latter Court had jurisdiction, because the relief sought could be entirely obtained by the personal obedience of the defendants, and that, therefore, the suit came within the proviso to section 16 of the Civil Procedure Code (Act XIV of 1882). He seems, however, to have quite overlooked the fact that this proviso also requires that the defendant, through whose personal obedience the relief sought could be obtained, should reside within the jurisdiction of the Court in which the suit was filed. In the present case the Subordinate Judge of Ratnágiri says that all the defendants do not reside within the local limits of the jurisdiction of his Court; the proviso, therefore, will not apply even if we assume that the District Judge was right in his opinion that the relief sought could be obtained through their personal obedience. We must reverse the order of the District Judge.

The Subordinate Judge ought not to have dismissed the suit, but returned the plaint to be presented to the proper Court under section 57 of the Code. For this reason we reverse his order of dismissal also, and direct him to return the plaint with the proper endorsement. The plaintiff must bear the costs of the defendants throughout.

Orders reversed.

APPELLATE CIVIL.

Before Mr. Justice Parsons, Acting Chief Justice, and Mr. Justice Ranade.

PARSHOTAM MANJI (ORIGINAL PLAINTIFF), APPELLANT, *v.* GANESH VINAYAK AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

1899. *April* 6.

Execution—Sale in execution subject to mortgage—Suit to set aside sale and for re-sale of property free from mortgage—Practice—Procedure—Civil Procedure Code (Act XIV of 1882), Sec. 287.

The plaintiff, having sold property in execution of a decree subject to a certain mortgage lien which had been duly investigated and allowed, brought this suit to have the sale set aside and praying for a re-sale of the property free from the mortgage lien.

* Second Appeal, No. 632 of 1898.