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favour was not valid. He accordingly decreed the plaintiffs' claim.

Against this decision the defendants appealed to the High Court.

D. A. Khare for the appellants.

V. G. Bhandarkar (with *V. K. Bhatavdekar*) for respondents.

CANDY, J.:—We agree with the District Judge that this case is governed by the decision in *Chinava v. Bhimangauda*⁽¹⁾; and that the daughter of a Hindu vatan^dar is not during the lifetime of her father a vatan^dar of the same vatan within the provisions of section 5 of Bombay Act III of 1874 as amended by Bombay Act V of 1886. We, therefore, confirm the decree with costs.

(1) (1897) 21 Bom., 787.

APPELLATE CIVIL.

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

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March 28.

ZENDOOLAL NANDLAL (ORIGINAL DEFENDANT No. 12), APPLICANT, v. KISHORILAL MEHTABRAI AND ANOTHER (ORIGINAL PLAINTIFFS), OPPONENTS.*

Civil Procedure Code (Act XIV of 1882), Sec. 108—Small Cause Court—Ex-parte decree—Satisfaction of the decree—Application by defendant to set aside decree.

The fact that an *ex-parte* decree has been satisfied, does not disentitle a defendant from applying to the Court to set it aside under section 108 of the Civil Procedure Code (Act XIV of 1882).

APPLICATION under the extraordinary jurisdiction of the High Court (section 622 of the Civil Procedure Code (Act XI of 1874)).

On the 18th August, 1897, the opponents obtained an *ex-parte* decree against the applicant in the Court of Small Causes, Bombay. The applicant was a resident at Delhi, and the decree was sent for execution. On the 31st August the applicant's goods were attached, and he (alleging that only then did he come to know of the suit) paid the amount of the decree and costs into the Court at Delhi as *amanat* (deposit), and on the 29th September,

* Application No. 9 of 1899 under the extraordinary jurisdiction.

97, applied to the Small Causes Court, under section 108 of the Civil Procedure Code (Act XIV of 1882), to set aside the *ex-parte* decree and for a re-trial. Meantime the opponents took of the Court at Delhi the amount paid in by the applicant, thus the decree was satisfied.

Subsequently the Judge of the Small Causes Court dismissed the application to set aside the decree on the ground that it was made too late. The applicant then applied to the High Court (No. 21 of 1898), and that Court remanded the case to the Judge, directing him to deal with the application on the merits.

On remand the plaintiffs contended that the decree being satisfied, there could not be another trial. The applicant contended that he had paid the amount of the decree into the Court at Delhi under protest, and that he had got the receipt of the bailiff of the Delhi Court showing that it was so, and that such a payment could not prevent a re-trial.

The Judge thereupon sent the receipt to the Delhi Court for certification, but the letter enclosing the receipt was directed to the District Judge of Delhi instead of to the Deputy Commissioner in whose Court the execution proceedings had taken place. The District Judge replied that the receipt was not passed by the bailiff of his Court. The Judge thereupon rejected the application to set aside the decree on the ground that the decree had been satisfied.

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

Ratanji R. Desai for the applicant in support of the rule:— The summons was not served upon the applicant. That fact is of itself a sufficient ground for setting aside the decree. We paid the amount of the decree under protest into the Court at Delhi. It was not our doing that the Delhi Court paid out the amount of the decree to the plaintiffs, though the application to set aside the *ex-parte* decree and for a retrial was pending in the Bombay Court of Small Causes. But satisfaction of a decree is no ground for refusing to set it aside. Section 108 of the Civil Procedure Code does not impose any such limitation,

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Manekshah J. Taleyarkhan appeared for the opponents (plaintiffs) to show cause :—The decree being satisfied there is nothing to be set aside or retried. The Judge found that the amount of the decree was not paid under protest. That is a finding of fact and this Court will not interfere, under its extraordinary jurisdiction, with such a finding of fact. The receipt of the bailiff of Delhi produced by the applicant was disclaimed by the District Judge of Delhi. The rule *nisi* should, therefore, be discharged.

PARSONS, C. J. (ACTING) :—This case was before this Court on a previous occasion (Application No. 21 of 1898) and it then ordered that the application should be heard on the merits. The Judge of the Small Cause Court has now dismissed it on the ground that the decree sought to be set aside has been satisfied. It appears that the decree was sent for execution to the Court at Delhi where the defendant resided, and that an attachment was there issued and the money was recovered. Whether it was paid under protest or not, was disputed in the Small Cause Court, and the Judge found that it was not proved that the money was paid under protest on the strength of the reply from the District Court at Delhi. It is pointed out to us that the Court which should have replied was the Court of the Deputy Commissioner, and that the District Court was necessarily ignorant of the fact. Be this, however, as it may, we are unable to hold that the fact that an *ex-parte* decree has been satisfied, disentitles a defendant from applying to a Court to set it aside under section 14 of the Civil Procedure Code. No authority has been shown to us for such a proposition, and we cannot assent to it. We direct the Judge of the Small Cause Court to obey the previous order of this Court, and to hear and dispose of the application on its merits. We make all costs, costs in the application.

Rule made absolute.