

1898.

KUBAJI  
v.  
VINAYAK.

is thus obvious that the previous execution of the decree against the surety cannot be regarded as a step in aid of execution against the principal in respect of the sums now claimed. The District Judge, therefore, very properly held that the execution was time-barred under these circumstances.

*Appeal dismissed.*

## CRIMINAL REVISION.

*Before Mr. Justice Parsons, Chief Justice (Acting), and Mr. Justice Ranade.*

*IN RE BULAKIDAS.\**

1898.

October 3.

*Maintenance—Husband and wife—Maintenance order obtained by a wife against husband—Subsequent decree for restitution of conjugal rights obtained by husband—Effect of such decree on previous order of maintenance—Criminal Procedure Code (Act X of 1882), Sec. 488.*

A decree of a civil Court for restitution of conjugal rights supersedes any previous order of a Magistrate for maintenance, if the wife should persist in refusing to live with her husband. A Magistrate ought to cancel a previous order of maintenance made by him, or rather treat it as determined, if the wife failing to comply with the decree for restitution refuses to live with her husband.

APPLICATION under section 435 of the Code of Criminal Procedure (Act X of 1882).

On 22nd May, 1891, Bai Ganga obtained an order for maintenance against her husband Bulakidas under section 488 of the Criminal Procedure Code (Act X of 1882) in the Court of the First Class Magistrate of Ahmedabad.

On the 1st February, 1892, Bulakidas sued Bai Ganga in the Court of the First Class Subordinate Judge of Ahmedabad, and obtained a decree for restitution of conjugal rights.

On 19th September, 1893, Bai Ganga applied to the Magistrate to enforce the order for maintenance and to recover twenty months' arrears of maintenance. Thereupon the arrears were paid into Court by Bulakidas.

On the 25th September, 1893, Bulakidas applied to the Magistrate for a refund of the money so paid into Court, alleging that his wife had returned to his house in obedience to the decree for

\* Application for Revision, No. 189 of 1898.

1898.

IN RE  
BULAKIDAS.

restitution of conjugal rights which he had obtained, and contending that she was, therefore, not entitled to recover the arrears of maintenance claimed by her. This allegation was held by the Magistrate to be not proved, and the application was rejected on 8th February, 1894.

In 1895, Bai Ganga filed a suit in the Agency Court at Rájkot for arrears of maintenance. This suit was ultimately dismissed on the ground that she had lost her right of maintenance by her own conduct, and that the Magistrate's order for maintenance could no longer be enforced.

Thereupon Bulakidas made the present application to the First Class Magistrate of Ahmedabad to cancel the order of maintenance passed in 1891.

The chief grounds upon which he made this application were :

(1) That he had obtained a decree in the Civil Court in 1892 for restitution of conjugal rights, and

(2) That after this decree his wife had returned to his house and lived with him for ten or twelve days, and that she had then left his house. This conduct (it was urged) disentitled her to any maintenance allowance.

The Magistrate held that both these objections had been raised before his predecessor in 1891, and had been overruled, and that he was, therefore, precluded from re-hearing them as decided by the Allahabad High Court in *Laraili v. Ram Dial*<sup>(1)</sup>. He was further of opinion that as the applicant had not executed the decree for restitution of conjugal rights, he was not entitled to the relief he claimed. He, therefore, dismissed the application.

Against this order of dismissal, Bulakidas applied to the High Court under its criminal and revisional jurisdiction.

*Goverdhan M. Tripati* for applicant.

*Ganpat S. Rao* for opponent.

PARSONS, C. J. (Acting) :—The authorities show that an order of a civil Court for restitution of conjugal rights supersedes any previous order of a Magistrate for maintenance, if the wife should persist in refusing to live with her husband—*Lutpotee Doomony*

(1) (1887) 5 All., 224.

1898.

IN RE  
BULAKIDAS.

v. *Tikha Moodoi*<sup>(1)</sup>, and that a Magistrate ought to cancel his order, or rather to treat it as determined, if the wife failing to comply with the decree for restitution refuses to live with her husband—*In re Kalidas Mansukram*<sup>(2)</sup>.

The Magistrate in this case has not found whether or not the opponent persists in refusing to live with the applicant. All he says is that the applicant has not executed the decree which he obtained for restitution of conjugal rights or sought to obtain possession of his wife. This is beside the case. The Magistrate must find whether the wife has obeyed the decree; if she has not, then she would not be entitled to a maintenance order.

We reverse the order of the Magistrate and remand the case for a rehearing.

(2) (1870) 13 Cal. W. R., 52 Cr. Rulings. (3) Criminal Revision, No. 119 of 1878.

## APPELLATE CIVIL.

*Before Mr. Justice Parsons, Chief Justice (Acting), and Mr. Justice Ranado.*

1898.  
October 5.

DADA BHAU KITTUR (ORIGINAL PLAINTIFF), APPELLANT, v. NAGESH RAMCHANDRA AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.\*

*Valuation—Court Fees Act (VII of 1870), Sec. 7, Cl. 10 (a), Cl. 4 (c), (d); Sec. 12—Class to which a suit belongs—Decision as to such class—Appeal—Practice.*

An appeal lies against a decision as to the class to which a suit belongs although it does not lie against a decision as to the valuation of the suit in that class. A decision of the lower Court, holding that a suit is one for specific performance of a contract of sale and to be valued according to the amount of the consideration-money, is appealable.

SECOND appeal from the decision of F. C. O. Beaman, District Judge of Belgaum, confirming an order passed by Ráo Bahádur G. V. Limaye, First Class Subordinate Judge.

The plaintiff brought this suit praying for a declaration that a certain purchase made in the name of the first defendant was a benámi transaction for him (the plaintiff) and for an order that the defendants should execute a conveyance of the property to him. The consideration money for the purchase was Rs. 1,265. The Subordinate Judge held that the suit was one for specific

\* Second Appeal, No. 227 of 1898.