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being used as to them, and requested that the term "Talukdars" should be used. The Government reply is as follows:—

"In reply to his petition, dated 26th September 1898, to the address of Government, Naik Ratansing Pratapsing of Tanda in the Dohad Taluka of the Panch Mahals District, is informed that Government have no objection to his being addressed as 'Talukdar' instead of 'Pattadar' in official communications, but it should be distinctly understood that this concession will not in any way affect the orders passed by Government in May 1880, regarding the tenure of the Petitioner's holding."

Now, the resolution of 1880 referred to was the foundation of the proposals as to the 10 per cent. margin, which, denying the proprietary rights of the Naiks, was objected to by the petition which was refused in 1883.

For these reasons their Lordships are satisfied that this appeal must be dismissed with costs, and they will humbly advise His Majesty accordingly.

Solicitors for appellants: Messrs. *T. L. Wilson & Co.*

Solicitor for respondents: *Solicitor, India Office.*

A. M. T.

ORIGINAL CIVIL.

Before Mr. Justice Fawcett.

1924.

March 31.

K. C. SHRIMAN NEDAN RAJAH KOTAKAL (PLAINTIFF) *v.* THE MALABAR TIMBER CO., LTD. AND OTHERS (DEFENDANTS)*.

Letters Patent, Clause 12—Land outside jurisdiction—Charge claimed by unpaid vendor—Defendant resident within jurisdiction—Jurisdiction of High Court in personam.

In a suit brought by the vendor of certain forest rights in land, situate outside the limits of the original jurisdiction of the High Court, against the purchaser (resident within those limits) for a declaration that he had a charge thereon for the amount of the unpaid purchase-money,

* O. C. J. Suit No. 1399 of 1921.

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Held, that the High Court had, under Clause 12 of the Letters Patent, jurisdiction *in personam* to grant the relief claimed.

The decision in *Holkar* v. *Dadabhai Cursetji Ashburner*[1] considered, and the question discussed whether its authority had been shaken or affected by the decision in *Vaghoji* v. *Camaji*[2].

Per FAWCETT J.:—"I would add that the view I now take is not, I think, inconsistent with that taken by me in *Yeshvadabai* v. *Janardhan*[3]. When the land is situated in Bombay, a suit to declare a charge on it can be a suit 'for land' within the meaning of Clause 12 of the Letters Patent, so as to give this Court jurisdiction over the suit which it otherwise might not have (as in that case and in *Sundara Bai Sahiba* v. *Tirumal Rao Sahib*)[4]. But when the land is situate outside the territorial limits of this Court's jurisdiction, then the words 'suits for land' in Clause 12 must be read subject to the qualification or proviso that this Court has a jurisdiction *in personam* similar to that exercised by a Court of Equity in England, and by a mofussil Court under the proviso to section 16 of the Civil Procedure Code of 1908..... I recognize that the addition of such a qualification or proviso is outside the ordinary canons of interpretation of a statute or other enactment like clause 12 of the Letters Patent, but it is a modification of the language to meet the intention of the statute, or at any rate what is said by authority binding upon me to have been its intention."

THE plaintiff was a lessee of certain forest rights in Arlum Forest in Malabar. On July 30, 1919, the plaintiff agreed to sell his rights to the second defendant firm of Jagabhai Manibhai and Co., who were carrying on business in Bombay, for the sum of Rs. 4 lacs. The second defendants were put in possession early in September and on September 13, a formal conveyance was executed by the plaintiff. The second defendants subsequently sold their rights in the said Arlum Forest to the first defendants, the Malabar Timber Co., Ltd., for Rs. 5,27,125. The Malabar Timber Co., Ltd., had their registered office in Bombay.

The second defendant having failed to pay the full amount of the purchase-money, the plaintiff sued to recover the balance, claiming (*inter alia*) a declaration that he was entitled to a charge on the forest rights for

(1) (1890) 14 Bom. 353.
(2) (1904) 29 Bom. 249.
(3) (1923) 25 Bom. L. R. 1172.
(4) (1909) 33 Mad. 131.

the amount. Leave to sue was applied for and granted under clause 12 of the Letters Patent.

It was contended on behalf of the defendants that the forest lands not being within the jurisdiction of the High Court of Bombay, the suit, so far as the claim to a charge on the lands was concerned, could not be entertained.

Bahadurji, with him *Kanga* (Advocate General), and *B. J. Desai*, for the plaintiff.

M. V. Desai, with *Munshi*, for defendant No. 1.

Taraporewala, with *M. C. Setalvad*, for defendants Nos. 2 and 3.

FAWCETT, J. :—This issue comprises two main questions,

(i) Whether, as ruled in *Holkar* v. *Dadabhai Cursetji Ashburner*[1], this Court, has, under clause 12 of its Letter Patent, jurisdiction *in personam* in regard to lands outside the original jurisdiction of this Court; and

(ii) If so, whether this suit is one in which such jurisdiction can properly be exercised.

In regard to the first point I think the answer should be in the affirmative, for the following reasons:—

(*a*) The decision in *Holkar* v. *Dadabhai Cursetji Ashburner*[1] is one that *prima facie* binds me sitting as a Judge on the Original Side of this Court, and unless it is shown to have been over-ruled, or shaken to an extent that ought to prevent me from following it, I am bound by that decision. In *Sundara Bai Sahiba* v. *Tirumal Rao Sahib*[2], it is said that the authority of this decision and of *Sorabji* v. *Rattonji*[3] is considerably shaken, if they are not over-ruled, by the later decision in *Vaghoji* v. *Camaji*[4]. But there are really five distinct questions involved in these cases, viz.,

1. Whether a suit 'for land' within the meaning of this clause 12 is confined to a suit *for the recovery or*

(1) (1890) 14 Bom. 353.
(2) (1909) 33 Mad. 131.
(3) (1898) 22 Bom. 701.
(4) (1904) 29 Bom. 249.

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delivery of land. So far as *Holkar* v. *Dadabhai Cursetji Ashburner*[1] might be said to support this view, it is no doubt shaken by *Vaghoji* v. *Camaji*[2]; but Jenkins C. J. points out at pp. 254-5 that really the decision in *Holkar's case*[1] is not based on any such view.

2. Whether a suit 'for land' extends to a suit where the purpose is to obtain a declaration of title to foreign land. This is decided in the affirmative in *Vaghoji* v. *Camaji*[2], but is not dealt with in the other two cases.

3. Whether the High Court of Bombay has all the powers of a Court of Equity in England for exercising jurisdiction *in personam* in regard to land outside the jurisdiction. This was directly decided in the affirmative in *Holkar's case*[1], and Jenkins C. J. in *Vaghoji* v. *Camaji*[2] takes that decision as binding (see at page 255): so the two previous Bombay decisions are certainly not over-ruled or shaken, so far as they proceed on deciding that question in the affirmative.

4. If so, whether such jurisdiction exists, even though the defendant does not reside or carry on business or personally work for gain in Bombay. This is impliedly decided in the affirmative by *Holkar's case*[1], for the defendant there did not reside or trade or carry on business in Bombay (see at pages 354-5), though no reference to this point is made in the judgment; it is also decided affirmatively in *Sorabji* v. *Rattonji*[3], but merely on the basis of previous binding authority. The point is not referred to in *Vaghoji* v. *Camaji*[2], so these decisions cannot be said to be affected by that case. They are no doubt affected by the criticism that a Court of Equity in England does not ordinarily exercise such jurisdiction *in personam*, except against persons residing or carrying on business within its

[1] (1890) 14 Bom. 353.
[2] (1904) 29 Bom. 249.
[3] (1898) 22 Bom. 701.

jurisdiction. There are, however, exceptions such as one referred to in *Jenney* v. *Mackintosh*[1] and *Dicder* v. *Amsterdamsch Trustees Kantoor*[2]; compare Dicey's Conflict of Laws, 3rd Edition, page 226, footnote (*g*), and Rule 60, pages 250-278.

In the unreported case of *Venkatrao Sethupathy* v. *Khimji Assur Virji** the Court of appeal has held that such jurisdiction does exist, not only in cases

(1) (1886) 33 Ch. D. 595. (2) [1902] 2 Ch. 132.

*Viz., Suit No. 692 of 1915: O. C. J. Appeal No. 27 of 1916.

This was a suit in which the plaintiffs were the mortgagees of the land, building and machinery of a Mill situate at Bellary (in the Madras Presidency). The suit, filed in the High Court at Bombay, came before Davar, J., and the plaintiffs obtained the usual mortgage decree. The appeal was heard by Scott, C. J., and Heaton J. and was dismissed with costs, the material portion of the judgment (delivered by Scott, C. J.) being as follows :—

"The first respondent appeals against the decree on the ground that the suit is a suit for land at Bellary and therefore not within the jurisdiction of the High Court under clause 12 of the Letters Patent and he challenges the correctness of the decision of this Court in *Holkar* v. *Dadabhai Cursetji Ashburner*[1] and the later case of *Sorabji* v. *Rattonji*[2]. The decision in *Holkar* v. *Ashburner*[1] has for many years been followed in this Court as establishing that suits by mortgagees to enforce their rights under their mortgages are not suits for land within the meaning of clause 12 of the Letters Patent. We are bound by that decision. Speaking for myself, it appears to me difficult to understand how a suit in which the mortgagee seeks to have the land vested in him under his mortgage sold to somebody else by the agency of the Court is a suit for land. It is a suit to realise and dispose of his and his debtors' interests in the land. The object of the suit is not to obtain land or to obtain a declaration of title to land or to obtain damages for interference with land, but to obtain repayment of debt owing to the plaintiff and for that purpose to realise the security which has been vested in him. I can see no more reason for treating such a suit as a suit for land than there was in *Nistarini Dassi* v. *Nundo Lall Bose*[3], where the plaintiff sought to set aside leases granted by the defendant-executors for land outside the jurisdiction for holding it a suit in which the Court had no jurisdiction. Mr. Justice Stanley observed that the Court assumes jurisdiction in regard to immoveable properties situate outside the jurisdiction in cases where it can act

(1) (1890) 14 Bom, 353. (2) (1898) 22 Bom. 701.

(3) (1899) 26 Cal. 891.

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where the defendants or some of them reside permanently within the jurisdiction but in cases where, according to the provisions of the Letters Patent, they have been lawfully caused to appear upon summons and where the cause of action or part of it has arisen in Bombay. It is, however, open to question whether this does not go further than the corresponding law in England which seems to allow of such extended jurisdiction outside the Court's territorial jurisdiction only

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in personam either to compel the owner to give effect to legal obligations into which he has entered or to a trust reposed in him. The Judicial Committee in appeal expressly upheld this ruling of the Calcutta High Court in reference to jurisdiction: *Benode Behary Bose* v. *Nistarini Dassi*[1].

It has been suggested for the defendants, however, that the Court here cannot act *in personam*, inasmuch as, although the cause of action arose wholly or in part within the jurisdiction and leave has been obtained to sue, he and the other defendants reside not in Bombay but in Bellary.

But the personal jurisdiction of the Court is exercised under clause 12 of the Letters Patent not only in cases where the defendants or some of them reside permanently within the jurisdiction but in cases where, according to the provisions of the Letters Patent, they have been lawfully caused to appear upon summons where the cause of action or part of it has arisen in Bombay.

The observations of Sir Charles Sargent in *Girdhar Damodar* v. *Kassigar Hiragar*[2] are instructive upon this point and it is to be observed that his judgment is referred to with approval by Lord Lindley in delivering the judgment of the Judicial Committee in *Annamalai Chetty* v. *Murugasa Chetty*[3]. The Appellate Court in Madras in *Srinivasa Moorthy* v. *Venkata Varada Ayyangar*[4] have also held that jurisdiction was rightly exercised by the Madras High Court in an administration suit *inter alia*, in respect of land situate outside the Madras Presidency (see the judgment of Subramania Ayyar J. at page 280), not only on the ground that the defendant had temporary residence within the jurisdiction but also because he was sued upon a cause of action, part of which had arisen within the jurisdiction. The decision was affirmed by the Judicial Committee in *Srinivasa Moorthy* v. *Venkata Varada Aiyangar*[5].

Lastly, I may refer to the judgment of Byrne J. in *Duder* v. *Amsterdamsch Trustees Kantoor*[6] as showing that where a defendant is lawfully brought

(1) (1905) 33 Cal. 180, P. C.
(2) (1893) 17 Bom. 662 at p. 668.
(3) (1903) 26 Mad. 544 at p. 552, P. C.
(4) (1906) 29 Mad. 229.
(5) (1911) 34 Mad. 257, P. C.
(6) [1902] 2 Ch. 132

when there is already one defendant who resides or carries on business in England: *cf* Dicey's Conflict of Laws, 3rd Edition, Exception 7 at page 265.

5. Whether such jurisdiction can be exercised to the extent of passing a decree which may affect the possession or control of the foreign land, e. g., by ordering a mortgage-debt to be realised by sale of the land. This is answered in the affirmative by the decision in *Holkar's*[1] and *Sorabji's*[2] cases; but the question is not directly dealt with in *Vaghoji* v. *Camaji*[3] though some remarks in the judgment as to the limitation on the jurisdiction exercised by a Court of Equity in England (at pages 256-7) may be said to weaken the authority of those decisions. On the other hand the judgment in *Venkatrao Sethupaty* v. *Khimji Assur Viryi*[4] holds that such a suit is not a suit for land.

(1) (1890) 14 Bom. 353.
(2) (1898) 22 Bom. 701.
(3) (1904) 29 Bom. 249.
(4) *Ante* p. 629 *f. n.*

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before the Court, the Court would not be deterred from making an order *in personam* with respect to land situate outside the jurisdiction merely by the fact that the person so brought before it has his residence in another country."

Leave to appeal to the Privy Council was subsequently applied for, and obtained, Scott, C. J., observing:—

"It appears from the argument of the Advocate General in *Holkar* v. *Dadabhai Cursetji Ashburner*[1] that in 1890 this Court had for eighteen years exercised jurisdiction over cases like the present and since *Holkar's case*[1] this Court has exercised jurisdiction in similar cases for a further period of twenty-seven years. That makes a consecutive period of forty-five years, during which the practice has been uniform to entertain mortgage suits in this Court relating to land outside the Presidency, and many titles have been founded upon decrees in such suits. At the same time it cannot be disputed that, as an original question free from previous decisions, the question of the jurisdiction of the Court over the land outside the Presidency is a substantial question of law. We have not been referred to any case in which the Privy Council has expressly dealt with it, and therefore, we think that rule might be made absolute on the ground that the appeal involves a substantial question of law."

The further appeal to the Privy Council, however, was not prosecuted. [Ed.]

(1) (1890) 14 Bom. 353 at p. 356.

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Therefore, it seems to me that the decision in *Holkar's case*[1] is not affected by *Vaghaji* v. *Camaji*[2] except in regard to points (1) and (5) and that it is confirmed in in regard to point (3), which is the main question now before me. Nor, for the reasons given in my interlocutory judgment No. 1†, do I think that the Bombay

(1) (1890) 14 Bom. 353. (2) (1904) 29 Bom. 249.

†Viz., judgment delivered on 6th March 1924 on an application by counsel for defendant No. 1 that this issue as to jurisdiction should be decided before the leading of evidence, which might, if the issue was decided in his favour, become unnecessary:

"I have come to the conclusion that I should not decide this point of jurisdiction at the present stage unless it is shown either (1) that the view taken by Sir Charles Sargent in *Holkar* v. *Dadabhai Cursetji Ashburner*[1] has been overruled by the Privy Council or (2) that the present case is one that could not possibly come under the personal jurisdiction exercised by English Courts of Equity, which, the judgment in that case held, may also be exercised by this Court, although the suit relates to land outside the original jurisdiction.

In regard to the first point Mr. Munshi contended that the Bombay view had been overruled by the decision of the Privy Council in *Harendra Lal Roy Chowdhuri* v. *Hari Dasi Debi*[2]. But it is quite obvious from the report of that case that this particular question was not brought under the consideration of the Privy Council. No citation of *Holkar's case*[1] appears to have been made, and the judgment contains no reference to this particular point. Another consideration is that, even supposing that the Privy Council there endorsed the view that the Calcutta High Court has taken as to the meaning of the words "suits for land" in clause 12 of the Letters Patent, it does not necessarily follow that they would hold that the same interpretation should be put on the same words in clause 12 of the Bombay Letters' Patent, because they might say that, in view of the settled practice in this Court for a long number of years and the principle of received construction referred to in Halsbury's Laws of England, Vol. 27, Article 266 at page 143, they saw no reason to interfere with the settled construction that this Court has put upon the words "suits for land". I am clearly of opinion that there is no ground for saying that the Bombay view has been overruled by the Privy Council and that, therefore, this Court cannot possibly have jurisdiction so far as the suit claims the particular relief I am considering."

After discussing the second point, the learned Judge decided not to come to any decision on the issue without hearing the evidence and considering the law and the surrounding circumstances. [Ed.]

(1) (1890) 14 Bom. 353. (2) (1914) L. R. 41 I. A. 110; 41 Cal. 972.

decisions have been over-ruled by the Privy Council in *Harendra Lal Roy Chowdhuri* v. *Hari Dasi Debi*[1].

(b) On the contrary it seems clear that there are two cases where such jurisdiction *in personam* has been exercised by the Madras and Calcutta High Courts respectively, and the Privy Council have held that the High Courts had jurisdiction to do so. In *Nistarini Dassi* v. *Nundo Lall Bose*[2] the Judge pointed out that in regard to the lands in suit he was exercising this jurisdiction *in personam*, and in the same case on appeal to the Privy Council *Benode Behary Bose* v. *Nistarini Dassi*[3], at page 191, the Privy Council approved of this, saying :—

"The High Court of Calcutta, in its Ordinary Jurisdiction, had a right to order administration of this estate, and, as ancillary to such an order, to set aside deeds obtained by the fraud of the executor. Nor does the circumstance that a decree had been granted by the Court of the 24-Pergunnahs making a fraudulent award an order of Court protect that decree from the jurisdiction of the Calcutta Court, when redressing that fraud. In like manner, their Lordships consider the Calcutta Court entitled, for the due administration of the estate, to set aside leases of land outside the territorial limits of their jurisdiction, those leases having been made as an incident of the same fraud."

Similarly in another administration suit, *Srinivasa Moorthy* v. *Venkata Varada Ayyangar*[4], the judgment of Subrahmania Ayyar J. shows that similar jurisdiction *in personam* was exercised by the Madras High Court in regard to land outside Madras, and the High Court's jurisdiction was confirmed as "too plain for argument" by the Privy Council in the same case on appeal: *Srinivasa Moorthy* v. *Venkata Varada Ayyangar*[5]. I may further refer to the remarks of Sir Arnold White C. J. in his judgment in *Srinivasa Moorthy* v. *Venkata Varada Ayyangar*[6] that the law

(1) (1914) L. R. 41 I. A. 110; 41 Cal. 972.

(2) (1899) 26 Cal. 891 at pp. 921-2.

(3) (1905) 33 Cal. 180, P. C.

(4) (1906) 29 Mad. 239 at p. 241.

(5) (1911) 34 Mad. 257, P. C.

(6) (1906) 29 Mad. 239 at p. 246.

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of England may be looked to for the purpose of ascertaining the intention of the Legislature in enacting clause 12 of the Letters Patent, which support the decision in *Holkar* v. *Dadabhai*[1].

(*c*) A point to be remembered is that clause 12 of the Letters Patent is similar in language to section 5 of the first Civil Procedure Code of 1859, and the close connection between the two is pointed out by Jenkins C. J. in *Sudamdih Coal Co., Ld.* v. *Empire Coal Co., Ld.*[2]. The provisions of this section 5 were changed in the next Code of Civil Procedure, Act X of 1877, section 16 of which was enacted in almost the same terms as the present section 16 of the Code of 1908. This in effect gives a definition of the expression 'suits for land', but contains a proviso which substantially allows the jurisdiction *in personam* in regard to foreign lands, such as is referred to in *Holkar* v. *Dadabhai*[1]. It was with reference to section 5 of the Code of 1859 that it was ruled in *Yenkoba Balshet Kasar* v. *Rambhaji valad Arjun*[3], and in *John Young* v. *Mangalapilly Ramaiya*[4], that such jurisdiction *in personam* could be exercised by a mofussil Court and the Legislature has clearly endorsed that view. As pointed out in the arguments of Latham, Advocate-General, in *Holkar* v. *Dadabhai*[1] (at page 356), this Court has always since *Yenkoba* v. *Rambhaji*[3] exercised this jurisdiction *in personam*; and it would be a strange anomaly if the High Court is deprived of the power of exercising this valuable form of equitable jurisdiction, in consequence of strict construction of the words 'suits for land' in clause 12 of the Letters Patent, while a mofussil Subordinate Judge's Court is allowed to exercise such jurisdiction.

(1) (1890) 14 Bom. 353.
(2) (1915) 42 Cal. 942 at p. 951.
(3) ((1872) 9 Bom. H. C. 12.
(4) (1866) 3 Mad. F. C. 125.

(Compare *Kashinath* v. *Anant*[1] and *Durga Das* v. *Jai Narain*[2]). It seems to me that the effect of the decision in *Holkar* v. *Dadabhai*[3] and the settled practice of this Court in regard to that jurisdiction is to add a proviso to clause 12, similar to that contained in section 16 of the Civil Procedure Code of 1908.

(*d*) It is not necessary for me to consider whether suit to enforce a charge on immoveable property cannot be said to be one within this personal jurisdiction, inasmuch as in such a case the relief sought cannot be completely obtained by personal obedience of a defendant residing or carrying on business in the jurisdiction, but in the last resort entails a sale of the land in order to enforce the charge. Nor need I enter into the wider question (5) that I have mentioned in the para. (*a*) of this judgment. The only relief affecting the land which is sought in this suit is the declaration of a charge upon it and it seems to me obvious that such a declaration is, at the worst, on the same footing as an injunction which can undoubtedly be issued in the exercise of this personal jurisdiction. If an injunction can be issued against the defendants restraining them from dealing with or disposing of the land in such a way as to obstruct or defeat this particular charge, *a fortiori* a declaration is a form of relief which can be given in exercise of this jurisdiction *in personam*. It may be pointed out that one result of such a declaration would be to put the plaintiff in the position of a secured creditor as against the defendant No. 1 Company, should it become insolvent or be wound up, and that is a right which might be of very considerable importance to him in Bombay as against the liquidator who would have jurisdiction in regard to this land although it is outside Bombay. (Compare the proviso to section 17 of the Presidency Towns' Insolvency Act, 1909). Even

(1) (1899) 24 Bom. 407. (2) (1917) 41 All. 513.

(3) (1890) 14 Bom. 353.

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If, as ruled in *Webb* v. *Macpherson*[1], the plaintiff has a statutory charge upon the land different from the equitable vendor's lien given by the English law, still he would have the advantage of having had his right to this charge adjudicated upon by a competent Court in a suit to which the Company is a party. This in effect will simply declare an obligation of the kind referred to in sections 91 and 95 of the Indian Trusts Act, 1882, and is one which undoubtedly could be given by a Court of Equity in England. If I am wrong, then the question still remains whether I am not bound by the decisions in *Holkar's*[2] and *Sorabji's*[3] cases, as well as the unreported judgment of this High Court in *Venkatrao Sethupathy* v. *Khimji Assur Virji*[4] which has already been referred to.

(*e*) No doubt defendant No. 3 is not alleged to reside or carry on business in Bombay, but he is not concerned with the relief sought in regard to the land, which now is held by the defendant No. 1 Company. Consequently the question (4) of those mentioned in para. (*a*) does not arise. In any case admittedly he was a mere nominee of the defendant No. 2 a firm, and the relief (if any) given would not affect him. Even if the suit did involve the grant of relief against him, I should, I think, be bound by *Holkar's*[2] and *Sorabji's*[3] cases, which are not affected on this point by *Vaghoji* v. *Camaji*.[5]

(*f*) I would add that the view I now take is not, I think, inconsistent with that taken by me in *Yeshvadabai* v. *Janardhan*[6]. When the land is situated in Bombay, a suit to declare a charge on it can be a suit 'for land' within the meaning of clause 12 of the Letters Patent, so as to give this Court jurisdiction

(1) (1903) 31 Cal. 57 at p. 72, P.C.
(2) (1890) 14 Bom. 353.
(3) (1898) 22 Bom. 701.
(4) *Ante* p. 629 *f n.*
(5) (1904) 29 Bom. 249.
(6) (1923) 25 Bom. L. R. 1172.

over the suit which it otherwise might not have (as in that case and in *Sundara Bai Sahiba* v. *Tirumal Rao Sahib*[a].) But when the land is situated outside the territorial limits of this Court's jurisdiction, then the words 'suits for land' in clause 12 must be read subject to the qualification or proviso that this Court has a jurisdiction *in personam* similar to that exercised by a Court of Equity in England, and by a mofussil Court under the proviso to section 16 of the Civil Procedure Code of 1908. If this distinction is borne in mind, it seems to me that much of the difficulties and of the apparent inconsistencies that surround rulings regarding the words 'suits for land' in clause 12 disappears. I recognise that the addition of such a qualification or proviso is outside the ordinary canons of interpretation of a statute or other enactment like clause 12 of the Letters Patent, but it is a modification of the language to meet the intention of the statute—or at any rate what is said by authority binding upon me to have been its intention—which is of the kind referred to in Chapter IX of Maxwell on the Interpretation of Statutes, 3rd Edition, pages 319-22. And it has behind it the authority of being a received construction in this High Court for a large number of years, and of confirmation by the Legislature in regard to the similar provisions of section 5 of the Civil Procedure Code of 1859, as compared with the provisions of section 16 of the subsequent Codes. Clause 12 is put in very condensed language and it has been expanded in another way, viz., the received construction as to its being read as if the part now under construction ran as follows:—"(*a*) In the case of suits for land or other immoveable property, such land or property shall be situated wholly, or, in case the leave of the Court shall have been first obtained, in

[a] (1909) 33 Mad. 131 at p. 132.

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part within the local limits of the ordinary original jurisdiction of the said High Court." See *Balaram* v. *Ramchandra*[1] and *Govindlal Bansilal* v. *Bansilal Motilal*[2]. This exemplifies how it may be legitimate to amplify the words of clause 12 in the way I seek to do.

Attorneys for plaintiff: Messrs. *Edgelow, Gulabchand & Co.*

Attorneys for defendant: Messrs. *Amin & Desai.*

O. H. B.

[1] (1898) 22 Bom. 922. [2] (1921) 46 Bom. 249 at p. 258.

APPELLATE CIVIL.

Before Sir Lallubhai Shah, Kt., Acting Chief Justice, and Mr. Justice Fawcett.

GADIGAPPA BIN CHANBASAPPA MALKARJUN, LEGAL HEIR AND REPRESENTATIVE OF CHANBASAPPA BIN RUDRAPPA MALKARJUN, DECEASED (ORIGINAL JUDGMENT-DEBTOR), APPELLANT *v.* SHIDAPPA GURUSHIDAPPA YALEHALI, AND ANOTHER (ORIGINAL HEIR OF No. 1 OF THE AUCTION-PURCHASER AND DECREE-HOLDER), RESPONDENTS*.

1924. *June* 17

Civil Procedure Code (Act V of 1908), section 11—Res judicata—*Execution proceedings—Application to set aside auction sale—Appeal—Preliminary objection—Further question of limitation—Effect of decision in previous stage of same proceedings—General principles of law.*

In execution of a decree transferred to the Collector, certain immoveable property of the judgment-debtor was sold on June 9, 1914 and purchased by the auction-purchaser. On July 4 the judgment-debtor applied to the Mamlatdar to have the sale set aside and deposited the amount required by Order XXI, Rule 89, Civil Procedure Code, 1908. The Mamlatdar received the deposit but having no authority to accept the application, referred the judgment-debtor to the Court on August 8, and on that date the judgment-debtor presented the application to the Court. Notices were issued and on September 24, the auction-purchaser agreed that the sale should be set aside. The application was, however, dismissed for default and a further application to have it restored to the file was rejected. This order was set aside in appeal by the

* Second Appeal No. 141 of 1923.