

APPELLATE CIVIL.

Before Sir John Beaumont, Chief Justice.

BABALDAS TRIKAMDAS AND COMPANY, A FIRM (ORIGINAL PLAINTIFF),
APPLICANT v. AJMIR RAMSUNDAR (ORIGINAL DEFENDANT), OPPONENT.*

1937
February 26

Civil Procedure Code (Act V of 1908), Order XXI, rules 58, 60, 63—Suit to establish right to attachment of property—If such suit is of a declaratory nature—Jurisdiction—Presidency Small Cause Courts Act (XV of 1882), section 19(s).

Where under rule 58 of Order XXI of the Civil Procedure Code, 1908, a claim is made to property and the claim is allowed under rule 60, a suit by a decree-holder under rule 63 of Order XXI to establish his right to the attachment of the property is not a suit of a declaratory nature.

Such a suit does not fall within section 19(s) of the Presidency Small Cause Courts Act, 1882, and the Presidency Small Cause Court has jurisdiction to entertain the suit.

Phul Kumari v. Ghanshyam Misra,⁽¹⁾ referred to.

Per Beaumont, C. J. "My own view is that the proper form of order in such a suit as this is not to set aside the order made under rule 60, which the Court had jurisdiction to make, but to direct that, notwithstanding the order previously made under rule 60, the attachment is to continue."

CIVIL REVISIONAL APPLICATION from an order passed by the full Court of the Presidency Small Cause Court, Bombay (Chitre, Chief Judge, and Indranarayan, Judge), setting aside the decree passed by S. E. Kurwa, Third Judge.

Suit under rule 63 of Order XXI of the Civil Procedure Code, 1908.

On December 13, 1935, Babaldas Trikamdas, a firm (applicant), obtained against one Desai Sampat a decree for Rs. 527-2-0 in suit No. 29480 of 1935 of the Small Cause Court, Bombay. In execution of that decree the applicant attached 15 buffaloes belonging to the judgment-debtor. Ajmir Ramsundar (opponent) preferred a claim to the buffaloes in question and the claim was allowed by the executing Court which referred the applicant to a separate suit.

*Civil Revisional Application No. 347 of 1936.

⁽¹⁾ (1907) 35 Cal. 202 F. C.

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On February 19, 1936, the applicant filed the present suit in the Presidency Small Cause Court, Bombay, and the trial Judge gave the applicant a decree in the following terms:—

“The summary order in claim and notice No. 15 of 1936 in the matter in execution in suit No. 29480 of 1935 vacated with Court costs and Rs. 68 as professional costs. Attachment to continue and immediate execution.”

The opponent thereafter applied to the full Court of the Small Cause Court and on June 16, 1936, the full Court set aside the decree of the trial Judge and dismissed the suit.

The plaintiff applied to the High Court.

P. H. Dalal, for the applicant.

G. N. Thakor, with *B. G. Thakor* and *S. R. Mehta*, for the opponent.

BEAUMONT C. J. This is a revision application against an order made by the full Court of the Bombay Small Cause Court, and the question raised is as to the jurisdiction of the Small Cause Court to entertain a suit by a decree-holder to establish his right to the attachment of property under Order XXI, rule 63, of the Civil Procedure Code.

The material facts are, that the plaintiff obtained a decree for Rs. 500 odd, and in January, 1936, in execution of that decree he attached fifteen buffaloes alleged to belong to the judgment-debtor. The present opponent made a claim to those buffaloes under rule 58 of Order XXI. That claim was inquired into by one of the learned judges of the Small Cause Court and was eventually allowed, and under rule 60 an order was made setting aside the attachment. The plaintiff then brought a suit in the Small Cause Court under rule 63, which is in these terms :

“Where a claim or an objection is preferred, the party against whom an order is made may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive.”

The learned Judge, before whom the suit came, entertained it and made a decree, setting aside the summary order made under rule 60, and directing attachment to continue and immediate execution to issue. The matter was then taken before the full Court, who held that the Small Cause Court had no jurisdiction to entertain the suit, because it was a suit for a declaratory order, although I may point out that the learned Judge who tried the suit had made no declaration.

General jurisdiction is conferred on the Small Cause Court by section 18 of the Presidency Small Cause Courts Act, 1882, and that jurisdiction extends to suits of a civil nature when the amount of the value of the subject-matter does not exceed Rs. 2,000. As the decree in this case was for much less than Rs. 2,000, and nobody suggests that fifteen buffaloes are worth Rs. 2,000, there is no doubt that from the point of view of pecuniary limit the Court would have jurisdiction, but the full Court considered that the Court had no jurisdiction, because under section 19, clause (s), suits for declaratory decrees are excluded from the jurisdiction of the Court. If the full Court is right in thinking that this suit is in its nature a suit for a declaratory decree, then no doubt the Court had no jurisdiction. The question really is, whether the suit is a suit for a declaratory decree. Now, the actual words of rule 63, as I have pointed out, are, “. . . a suit to establish a right which he claims . . .” All suits are suits to establish rights of one sort or another, and obviously the right may or may not be a right to a declaration. The words of the rule are on that point completely neutral. It may well be that an order might be framed under rule 63 in a declaratory form,—an order declaring that the plaintiff is entitled to attach the property of the judgment-debtor would probably satisfy the plaintiff’s requirements; but, on the other hand, it seems to me plain that the Court can make an order which is not in the form of a declaration. An order in this form “The Court being

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of opinion that the judgment-debtor is entitled to the property sought to be attached directly, notwithstanding the order already made under rule 60, the attachment of the plaintiff to continue," would, in my opinion, be a proper and effective order which does not involve in point of form any declaration. I think, however, that one has to look at the substance of the order sought for under rule 63 without regard to the particular form in which it may be expressed. Now, it has been held in various cases, both in this Court and in other Courts, that a suit by the claimant under rule 63 is a suit to establish a right to the claimant's property which is sought to be attached as belonging to the judgment-debtor, and is not a suit for a declaration. But it is argued that inasmuch as a decree-holder claims no title to the property but a mere right to attach it, therefore, a suit by him under rule 63 is a suit to establish a right other than a right to property, and is, therefore, of a declaratory nature. But I am unable to agree with that view. It is no doubt a suit to establish a right, and not to establish title to property but the right which the plaintiff seeks to establish is a right to attach the judgment-debtor's property and not merely a right to a declaration that he is entitled to attach the judgment-debtor's property. The plaintiff seeks a substantive right and not a mere right to a declaration. Cases arising under the former Small Cause Courts Act seem to me to have no application, because that Act defined the particular classes of cases in which the Court had jurisdiction. I may point out that the Privy Council in *Phul Kumari v. Ghanshyam Misra*⁽¹⁾ held that the essence of a suit under the then section 283 of the Code, corresponding to the present rule 63, was to set aside an order. That opinion was expressed in reference to a point arising under the Court-fees Act, and it shows that their Lordships considered that the essence of the suit under rule 63 was to set aside an order and not merely to ask for a declaration. My own view is

⁽¹⁾ (1907) 35 Cal. 202 p. c.

that the proper form of order in such a suit as this is not to set aside the order made under rule 60, which the Court had jurisdiction to make, but to direct that, notwithstanding the order previously made under rule 60, the attachment is to continue. That is substantially the order which the learned trial Judge made.

In my opinion, therefore, the Court had jurisdiction to entertain the suit, and the order of the trial Court should be restored.

The applicant is entitled to costs throughout.

Rule made absolute.

Y. V. D.

ORIGINAL CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Blackwell.

RAMGOPAL RAMRIKH PANDYA AND OTHERS (ORIGINAL PLAINTIFFS),
APPELLANTS *v.* TARACHAND GHANSHYAMDAS AND OTHERS (ORIGINAL
DEFENDANTS), RESPONDENTS.*

1937
March 3

Letters Patent clause 12—"Carry on business"—Firm with different constitution and same name carrying on business at three places—Majority of partners in firms common—Suit against one of such firms at place for transactions effected at another—Partners carry on business where firms carry it on—Jurisdiction to entertain suit.

Prior to 1930 the firm of Mamraj Rambhagat was carrying on business in a large way in Bombay and various other places in India either as such or in partnership with various other individuals and firms. One of such firms with which the firm of Mamraj Rambhagat entered into partnership for carrying on business at Karachi and Meerut was the firm of Tarachand Ghanshyamdas. The firm of Tarachand Ghanshyamdas carried on business at Calcutta. It consisted of eleven partners. This firm also carried on business at various places either as such or in partnership with other individuals and firms. Among other places it carried on business in the name of Tarachand Ghanshyamdas at Bombay in partnership with an individual. The firm of Mamraj Rambhagat got into difficulties and as a result entered into a scheme of composition with its creditors on April 23, 1930, by which all its assets were vested

*O. C. J. Appeal No. 38 of 1936; Suit No. 389 of 1933.