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Feb. 1.

*Civil Petition.*

DHUNDIRÁM SÁNTUKRÁM.....*Applicant.*

CHANDANÁBÁI, widow .....*Respondent.*

*Jurisdiction, Order made without—Modification of Order—Property in Dispute—Danger of Waste—Evidence of—Injunction to Stay—Manager—Act VIII. of 1859, Secs. 9 and 92.*

Where a court has no jurisdiction to make an order, it can have no jurisdiction to modify such order.

It is not lawful for a District Court, under Sec. 92 of Act VIII. of 1859 to issue an injunction to stay waste, &c., or to appoint a receiver or manager, in respect of property in dispute, in a suit pending in a subordinate court.

The District Judge may withdraw the suit from the subordinate court to the District Court, under Sec. 6 of the Code, and then make orders in accordance with the terms of Sec. 92.

*Seemle* a court having jurisdiction to make orders under Sec. 92 has no right to make such orders without some evidence that the property in dispute in the suit is in danger of being wasted, damaged, or alienated by any party to the suit.

**T**HIS was an application to set aside an order purporting to have been made, under Sec. 92 of Act VIII. of 1859, by A. Bosanquet, Acting District Judge of Ahmednagar, on the 10th of December 1864; as well as a subsequent order in modification thereof, dated the 5th of January 1865: on the ground that both the orders were made without jurisdiction.

On the petition of the applicant, a rule was granted by the High Court, on the 21st of December 1864, calling upon the opposite party to show cause why the order of the 10th of December should not be reversed; and the District Judge was directed to report upon the petition, and forward the proceedings in the case. His report was as follows:—

“ I report on the matter as it now stands; for since the date of the petition there have been further proceedings in the case.”

“ Dhundirám petitioned the Judge, Mr. Richardson, for a certificate of heirship to Santukrám, who, he alleged, had

adopted him ; but Chandanábái opposed the petition, on the ground that she was the widow of Chimnerám, who had been adopted by Santukráam, and who was Dhundirám's elder brother. The Judge considered it very doubtful if a valid adoption of Dhundirám by Santukráam had taken place. He, therefore, suspended further proceedings in the case, until the question of the adoption of Dhundirám by the deceased Santukráam had been tried by a regular suit. In consequence of that decision this suit has been instituted.

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"After the institution of the suit Chandanábái petitioned me to stay the waste of the property in dispute, alleging that Dhundirám was wasting and alienating it. And it appears from the evidence of Lakshuman, Vishnu, Trimbak, Bápu, Ráma, and Bhikáji, that Dhundirám did deal with the property in dispute as his own, and that there certainly was danger of his alienating it. I deputed the Názir of the Court to make an inventory of the property, and to manage it until the defendant, Dhundirám, should furnish security for it.

"The amount at which Chandanábái has estimated her claim appears excessive ; and, therefore, instead of demanding from Dhundirám security according to the amount of Chandanábái's claim, I consider that, if the defendant, Dhundirám, furnish security according to the value of the articles detailed in the inventory taken by the Názir, neither party will have reason to complain. I have, therefore, modified my first order accordingly ; and I have ordered that, on Dhundirám's furnishing the required security, the attachment shall be removed from the property.

"Dhundirám has undertaken to furnish security."

*Pandurang Balibhadra* now appeared to show cause:—The applicant is the defendant in a suit brought by the respondent, as legal representative, to recover possession of the property of Santukráam, deceased. He did not furnish security ; but asked for an extension of time to do so. The parties were ordered to attend before the Judge on

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the 3rd of January, and an order was made by the Judge on the 5th idem.

*White* (with him *Dhirajlal Mathura'da's*), in support of the rule :—We ask to have the order of the 10th of December reversed, as the Judge had no jurisdiction to make it under Sec. 92 of the Code ; and that being so, he had no power to modify it, by the subsequent order of the 5th of January. The suit was not filed in the Judge's Court, but in that of the Principal Sadr Amin, as appears from the papers, though not mentioned in the report of the Judge. He, therefore, could not interfere, except by way of appeal. Moreover, no evidence was taken before the order of the 10th of December was made, that the property in dispute in the suit was " in danger of being wasted, damaged, or alienated by any party to the suit ;" and it is only where such is " shown to the satisfaction of the Court " that " it shall be lawful for the Court to issue an injunction to such party," and " to appoint a receiver or manager of such property."

COUCH, J.:—I am of opinion that the Judge, not having transferred the suit to his own court, under Sec. 6 of the Code, had no jurisdiction to make the order of the 10th of December.

Having no jurisdiction to make an order in the suit, which was not in his court, under Sec. 92 of the Code, the Judge could have no jurisdiction to modify that order, as he did on the 5th of January.

NEWTON and WARDEN, JJ., concurred.

*Application granted.*