

APPELLATE JURISDICTION (a).

Referred Case No. 5 of 1871.

MARTHAMMA

against

KITTU SHEREGARA.

A Court which cannot attach primarily in execution of its decrees, cannot attach in anticipation of it.

CASE referred for the opinion of the High Court by R. Vasudeva Rán, the Additional Principal Sadr Amin. of Mangalore, in Suit No. 10 of 1871.

1871.
February 15.
R. C. No. 5
of 1871.

The suit was brought for the recovery of certain jewels or their value, said jewels having been borrowed by defendant and not duly returned. At the time of filing the plaint, the plaintiff put in an application, under Section 81 of the Civil Procedure Code, requesting that certain land might be attached, as the defendant was about to dispose of his immoveable property. The Principal Sadr Amin doubted whether the provisions of Sections 81 to 84 of the Civil Procedure Code, in regard to attaching immoveable property, extended to Small Cause suits under Section 47 of Act XI of 1865, and he referred the question—

‘Whether a Court of Small Causes can attach immoveable property before judgment, under Section 83 of the Code of Civil Procedure.’

No counsel were instructed.

The Court delivered the following

JUDGMENT :—We are of opinion that a Court which cannot attach primarily in execution of its decree, cannot attach in anticipation of it. This shows the Section of the Civil Procedure Code inapplicable in this case.

(a) Present: Holloway, Ag. C. J. and Innes, J.