

In the High Court of Judicature
at Bombay.

Testamentary & Intestate Jurisdiction.

Suit N^o. 23 of 1898.

Jacob Hajee Essa & another. . . . Plaintiffs

vs.

Hoorbai Widow and others. . . . Defendants.

7th August 1908.

Coram Russell J.

Judgment.— This matter
was argued fully before me yester-
day and I took time to consider
my judgment first because it
was a motion to commit the 3rd
Defendant for his not having complied
with

(2.)
with the order made against him and
secondly to consider the two cases which
were cited by Mr. Bahadurji on his
behalf.

It appears that this suit
arises out of a Petition for Letters
of Administration, with the Will an-
nulled, of the property of one Haji
Ebrahim Haji Tar Mahomed by the
Plaintiff for the use of a certain
minor, and on the 24th July 1900
a decree was passed ordering the
Defendants to pay to the Plaintiffs
the costs of the suit and all costs
reserved. On the 1st May 1905 a
notice under Section 248 of the Civil
Procedure Code was issued against
two of the Defendants viz. 2nd and
3rd Defendants to show cause why
the

(3.)
The decretal order should not be executed against them for taxed costs amounting to Rs. 8000. That apparently was a mistake. That ought to have been about Rs. 4400. The Defendants impeached the validity of the decree ^{on the ground of fraud}. The notice came on for ~~being~~ argument and then this order was made which I must read at length. (His Lordship reads the order dated the 29th August 1905.)
Then a suit - being Suit No. 20 of 1905 - was filed against the Plaintiff by these two Defendants ^{on the 27th September 1905} to set aside the said decree and for other reliefs, and I passed a decree setting aside the order as to the payment of costs contained in that decree. The Plaintiff preferred an appeal on the

(4.) 27th day of November 1906 with cross-objections and the appeal was heard and decree passed on the 18th July 1907, reversing my decree with costs on the respondents. An application was made for leave to appeal to the Privy Council but was refused.

It appears that in spite of that order, which I have referred to, the said Defendants by an Indenture of Mortgage dated the 27th May 1907 mortgaged their $\frac{3}{4}$ th share in the said property at Kambekar Street to Mr. Peter Byrne of the firm of Messrs. Smetham Byrne & Co., who were then acting as attorneys for the two Defendants in consideration of their costs already incurred in that suit and the costs

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of the appeal and the costs hereafter to be incurred in the said appeal.

Of course the question I have to decide is that of the breach by this Defendant of the undertaking of the order, and I draw special attention to the words in the order: "till the final disposal of the disputes in this suit." It is not "until the final disposal of this suit" nor "until the judgment in this suit." If it were "until the judgment in this suit," I think the cases which Mr. Bahadurji relied upon in (1905) 2 Ch. Div., 656, and in I. L. R. 7 Bom., 518, would apply. No doubt for certain purposes the word "judgment" has been treated as a judgment of the original Court and not final judgment. The words here are: "till the

the

(6.)
The final disposal of the disputes in this
suit. At the time when the order
was made it was perfectly obvious to
my mind that there was a dispute
in this suit which was contemplated
namely whether the Defendant could
or could not deal with the property,
and the whole object of the order
was to prevent the Defendant from
dealing with this property until
the final disposal of the disputes in this suit were
settled, and the mortgage itself
is the mortgage of the costs of the suit
and of the appeal. I have since
yesterday been able to find a case
which to my mind directly bears on
this case. It is the case of Jones v. Reynolds,
reported in 1 Adolphus & Ellis's Reports,
page 384. (I state the head-note.)
The words there are: "until after the final
hearing"

(7)
hearing of a chancery suit." Here the
words are: "till the final disposal
of the disputes in this suit." And Lord
Denman, C. J., says: - "Final decree
must mean a conclusive decree:
the decree of the Master of the Rolls
is not conclusive till the appeal be
determined." Littledale J., Patteson J., and
Williams J. concurred. Rule ab-
solute."

Here in my opinion the final
disposal of the disputes in this suit
cannot be said to have occurred
until after the appeal was de-
cided - from the decree which I
had passed. ^{was decided.}

I, therefore, make the no-
tice absolute, and I commit De-
fendant 3 to the Civil Jail, until
further order, for the breach of the
order

(8.)
order which I have set out above.
The 3rd Defendant must pay
the costs of the motion.

A. S. Long,
Shorthand Writer,
High Court, O.G.
10. - 8. - 08.

High Court, Bombay

D. x 9. J.
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Suit No. 23 of 1898

Jacob Hajee Essa }
& another. }

vs.

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Oral Judgment
delivered by Russell
on the 7th August 1898

Approved as with
J.P. 12

12/8/98