

1865.
Nov. 16.

Civil Petition.

Ex parte MANOHAR BHIVRA'V.

Execution of Decree—Waiver of objection to Jurisdiction.

Held that if a defendant who appears in a suit chooses not to raise the plea of want of jurisdiction, he must be taken to submit to the jurisdiction; and that any decree which may be pronounced against him cannot, when it is sought to be executed, be objected to by him, on the ground that the court which made it had no jurisdiction to try the suit.

THIS was an application to set aside an order, passed, on the 9th of July 1864, by R. H. Pinhey, District Judge of the Konkan, on appeal from an order by the Munsif of Mahád.

The decision of the District Judge was as follows :—

“ It appears that a decree has been given against the petitioner, Manohar Bhivráv, *Khazánis* and *Potánis* (a), by the court of the Munsif at Mahád, which the plaintiff now seeks to enforce against some rice, the property of the petitioner. The petitioner objects to the execution of the decree, on the ground that he, being a First Class Sardár of the Dakhan, is not subject to the jurisdiction of the court of the Munsif at Mahád.

“ The petitioner's pleader admits that the decree of the Munsif's court was not given *ex parte*, but in a suit which the petitioner defended. It is unnecessary, on this application, to determine the question of the petitioner's liability to the jurisdiction of the Munsif's court at Mahád. The decree of the court, having been made against him, is a good decree, and must be enforced, so long as it is not reversed or set aside by competent authority. It cannot be set aside on a simple motion such as this.

“ The application is, therefore, rejected; and the petitioner, if his allegation regarding the want of jurisdiction on the part of the Munsif's court at Mahád be a good objection, is left to seek to set aside the subsisting decree of the Munsif, either by asking for a review of judgment, or by preferring an appeal, as he may be advised.”

(a) Treasurer and Cashier, from the Persian.—Ed.

Ganesh Hari Patvardhan, for the applicant, had obtained a *rule nisi*, which he now moved to make absolute, calling upon the decree-holder to show cause why the orders of the courts below should not be set aside for want of jurisdiction.

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Pándurang Balibhadra, for the decree-holder :—The applicant, *Manohar*, appeared to defend the suit in the Munsif's court. He might then have objected to the court's trying the suit, on the ground of want of jurisdiction. But not having done so, he must be considered to have waived his right to take that objection, and to have submitted to the jurisdiction of the Munsif's court. It is too late for him now to urge the objection.

WESTROPP, J. :—Before the Munsif the applicant either did, or did not, raise the objection of want of jurisdiction.

If he raised it, and the Munsif wrongly disallowed it, he ought to have appealed to the Judge ; and there would have been a special appeal to this court.

But if he did not raise it, he must be taken to have waived it ; and it is certainly too late for him to raise it now, when the Munsif's decree is sought to be executed.

The application is, therefore, rejected with costs.

TUCKER AND WARDEN, JJ., concurred.

Application rejected.

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Civil Petition.

Dec. 13.

JAMSEDI KA'VASJI *Appellant.*
 MOTI'BA'I, wife of Bamanji Nasarvanji *Opponent.*

Certificate of Administration—Parsi Woman—Act XXVII. of 1860.

Where two relatives of a deceased person severally apply, under Act XXVII. of 1860, to a District Judge for a certificate to administer the estate :—*Held* that it is not a proper course for the District Judge to refer them to a regular suit ; he should determine, in the manner pointed out by the Act, whether either, and if so which, of the applicants has a right to the certificate, and grant the same accordingly.

THIS was an application, in the nature of an appeal against an order made by the District Judge of Surat,