

[APPELLATE CIVIL JURISDICTION.]

*Small Cause Court Reference No. 124 of 1873.*1873
October 14.GENDU MALHA'RI *Plaintiff.*GOVIND ATMA'RAM *Defendant.**Small Cause Court—Act XI, of 1865, Sec. 8—Jurisdiction—**Place of Dwelling.*

A servant residing within the jurisdiction of one Small Cause Court who has a family house within the limits of the jurisdiction of another Small Cause Court in which his father lives, and which he himself occasionally visits, does not dwell within the local limits of the latter Court within the meaning of Sec. 8 of Act XI. of 1865; and, although the cause of action may have arisen there, a suit against him will not lie in that Court.

THIS was a reference by Náráyan Balwant Bhise, Judge of the Small Cause Court at Yáwal, for the orders of the High Court.

The Judge stated the case as follows :—

“The defendant and his family have a common place of dwelling within the jurisdiction of this Court, but he has been residing, for some time prior to the filing of the suit, within the jurisdiction of another Court, and is in service there. Now, in this case, the question is, whether or not he shall be deemed to be residing at both places, and whether or not the suit is triable by this Court?”

“My opinion is that the defendant cannot be deemed to be residing at both places, and that, therefore, the suit cannot be tried by this Court.”

After referring to Act XI. of 1865, Sec. 8, and explanations (a) and (c), the Judge proceeded to say :—“Now, as regards the present case, the plaintiff has stated in his evidence that the permanent dwelling of the defendant and his family is at Sárda, within this Court's jurisdiction; that his father dwells there; that the cause of action has arisen within the jurisdic-

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tion of this Court ; that at the time when the cause of action arose, the defendant dwelt within this jurisdiction ; and that he comes to visit his father. Again, even if these facts be held to be true, still the plaintiff appears to have admitted in the same deposition as follows : That the last time when the defendant came to see his father he stayed for two days ; that four days after, this suit was filed ; that at the time when the plaintiff commenced this action, the defendant did not personally dwell within the jurisdiction of this Court, nor did he come into that jurisdiction after the suit was filed ; that the defendant has been personally working, *i.e.*, doing service at Násik, within the jurisdiction of another Court for the year previous to the time when the suit was filed, and that the defendant has been so working continuously for some time ; that he does not himself work for gain within this jurisdiction, neither by his servant nor agent, and that he dwells at present at Násik, where the cause of action did not arise.

“Under all these circumstances, I consider that the defendant dwells within the jurisdiction of another Court and personally works there ; and that, although the cause of action did not arise within that jurisdiction, the defendant should be deemed to reside within such jurisdiction and not within my jurisdiction. I, therefore, am of opinion that the suit is not triable by this Court, and I am confirmed in this view of the case by a decision of the Calcutta High Court in *Portish Paray v. Hachim Khansamah* (a). However, as I have not found any such decision in the reports of cases decided by the High Court at Bombay, and feel myself doubtful whether or not my view of the case as stated is correct, I submit the case for the orders of the High Court.”

The reference was heard by MELVILL and PINHEY, JJ.

PER CURIAM :—It appears that the defendant's usual place of residence is not within the limits of the Court's jurisdiction, although he has a family house there in which his father lives, and which he occasionally visits. The Court thinks

(a) 7 Cal. W. Rep. Civ. R. 417.

that, under the circumstances, the Judge was right in holding that the defendant is not dwelling within the local limits of his jurisdiction within the meaning of Sec. 8 of Act XI. of 1865.*

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Reply accordingly.

Act XI. of 1865, Sec. 8, Ex. a.—Where a person has a permanent dwelling at one place, and also a lodging at another place for a temporary purpose only, he shall be deemed to dwell at both places in respect of any cause of action arising at the place where he has such temporary lodging.

[APPELLATE CIVIL JURISDICTION.]

Application for the exercise of Extraordinary Jurisdiction, No. 33 of 1873.

Sept. 26.

KÁVASJI BHIMJI.....*Petitioner.*

DHONDIRÁJ VINA'YAK by his agent VISA'JI...*Opponent.*

The Code of Civil Procedure, Sec. 338—Stay of execution of a decree.

When an Appellate Court reverses a decree in favour of the plaintiff in a suit, it ought not to stay execution of its own decree under Section 338 of Act VIII. of 1859.

Order of District Court staying execution under such circumstances set aside.

THIS was an application for the exercise of the Court's extraordinary jurisdiction.

Dhondiráj obtained a decree against Kávasji in the Court of the Subordinate Judge of Panwel, and, in execution of it, attached certain moveable property belonging to Kávasji. This decree was reversed by the Appellate Judge, Mr. Coghlan, who, however, on the application of Dhondiráj, ordered that execution of his own decree should be stayed for a period of