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VASUDEV
ANANT
v.
RA'MKRISHNA
AND
SHIVRA'M
NA'RAYAN.

of Rs. (10) ten placed by the plaintiffs on their plaint and memorandum of appeal No. 35 of 1877, so far as they seek a declaration against Government, would cover.

Order accordingly.

[APPELLATE CIVIL.]

Before Sir. M. R. Westropp, Knt., Chief Justice, and Mr. Justice Melvill.

January 31.

MUNSUK MOSUNDA'S (PLAINTIFF) v. SHIVRA'M DEVISING
(DEFENDANT).*

Jurisdiction—Execution of a decree beyond the local jurisdiction of a Court of Small Causes in the Mofussal—Civil Procedure Code (Act X. of 1877), Sections 223 to 229, and Section 648.

Small Cause Courts in the Mofussal are not at liberty to execute decrees against moveable property beyond their local jurisdiction.

THIS case was referred for the opinion of the High Court by Cursetji Manekji, Judge of the Small Cause Court at Ahmedabad, under section 617 of Act X. of 1877.

The plaintiff had obtained a money decree in the Small Cause Court at Ahmedabad against the defendant, who resided at Dholka, and who had no property, moveable or immoveable, within the jurisdiction of the Court in which the decree was obtained. In execution of that decree the plaintiff applied for a certificate against the defendant's moveable property in Dholka. In submitting the case the Judge made the following remarks:—

“The question for the opinion of the High Court is,—has this Court power to grant a certificate against moveable property found beyond its local limits? I am of opinion that a Court of Small Causes has now no power to issue such a certificate.

“Under the old Civil Procedure Code (VIII. of 1859) the decree of a Court of Small Causes was capable of being executed against the judgment-debtor's moveable property out of the decree-making Court's jurisdiction (see an anonymous case in IX. Calc. W. R. p. 175 Civ. Rul.; and also *P. Venkatasubia v. Sivaramappa*⁽¹⁾), and it has hitherto been the practice to issue certificates, under the pro-

* Small Cause Court Reference No. 127 of 1877.

(1) 4 Mad. H. C. Rep. 331.

visions of section 286 of Act VIII. of 1859, against moveable property beyond the jurisdiction of this Court.

“The present application, however, comes under the New Code (X. of 1877); and as sections 223 to 229, both inclusive, and section 648 (except as to arrest) of this Code do not apply to Courts of Small Causes, a person holding a Small Cause Court’s decree is confined to such remedy only as is provided by section 20 of the Act constituting the Mofussal Courts of Small Causes (XI. of 1865).

“This section 20 is now the only law which provides for the execution of a Small Cause Court’s decrees outside its local limits; and it empowers a Court of Small Causes, in certain cases, to issue certificates against immoveable property only. Therefore, I submit, a Court of Small Causes cannot now execute its decrees against the judgment-debtor’s moveable property outside its own jurisdiction.

“This being so, a question arises as to whether this Court has power, under the said section 20, to issue certificates, even against immoveable property, where it is admitted that the judgment-debtor is possessed of moveable property outside the Court’s jurisdiction, against which, as it appears, no execution could be had. This, however, is not the question now before me, and it need not be discussed at present.

“In this case the application is for a certificate against the judgment-debtor’s moveable property at Dholka, outside the local limits of this Court. The judgment-debtor is not possessed of any immoveable property; so that the decree-holder is practically without remedy. This sort of cases will now be of frequent occurrence, as decrees in this Court will now be constantly made against defendants not resident within its jurisdiction.

“It will thus be seen that the New Code of Civil Procedure, whilst amplifying the scope of a Small Cause Court’s usefulness, under section 17 neutralizes the same by curtailing the facilities for executing its decrees which such a Court hitherto possessed. It is not, however, for a Court of Justice to question or to consider the policy of the Legislature. I make these remarks simply with

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a view that, perhaps, the Honourable the High Court may think fit to represent the matter to Government, so that, by a short amending Act, the provision of Chapter XIX., Part A., of the New Code may be made applicable to Courts of Small Causes, as the corresponding provisions of Act VIII. of 1859 had been before. A bill, if I mistake not, for amending one of the schedules of the New Code, is even now before the Calcutta Legislative Council, and, if timely representation be made, the amendment here proposed, might be included in it.

“The question for the opinion of the High Court is,—can a Court of Small Causes, in cases coming under the New Code of Civil Procedure, issue certificates against the *moveable* property of the judgment-debtor outside its own local limits?”

PER CURIAM :—Section 5 of Act X. of 1877 enacts that the sections of that Act, which are mentioned in the second schedule, shall be applicable to Courts of Small Causes in the Mofussal. We do not find in that schedule any of the sections from section 223 to section 229 inclusive, nor any portion of section 648, except that which relates to the subject of arrests, and we, consequently, have come to the conclusion that the Legislature has deliberately resolved that Small Cause Courts in the Mofussal shall not be at liberty to execute decrees against property beyond their local jurisdiction. Under these circumstances, we must answer the question submitted to us in the negative, and we decline to make any such representation to Government, as suggested by the learned Judge of the Small Cause Court of Ahmedabad.

[APPELLATE CRIMINAL.]

Before Mr. Justice Melville and Mr. Justice Kemball.

February 28.

IMPERATRIX v. GOWDA P'A BIN VENKUGOWDA.*

The Code of Criminal Procedure (Act X. of 1872), Sections 44, 142, 215, 295, and 296—Discharge—Revival of prosecution.

When an accused person has been discharged by a Subordinate Magistrate under section 215 of the Code of the Criminal Procedure, and the Magistrate of the District, after calling for the proceedings, considers that the order of discharge

* Criminal Appeal No. 8 of 1878.