

APPELLATE CIVIL.

(13)

1878
January 17.

Before Sir M. R. Westropp, Kt., Chief Justice, and Mr. Justice We-t.

GOVIND VAMAN (ORIGINAL PLAINTIFF), APPELLANT, v. SAKHA RAM
RAMCHANDRA (ORIGINAL DEFENDANT), RESPONDENT.*

*Decree against a Sirdar—Execution against Sirdar's Heir who is not a Sirdar—
Jurisdiction—Estoppel—Refund of amount levied in irregular execution.*

The mode of enforcing against a Sirdar's heir (who is not a Sirdar) a decree passed by the Agent's Court against that Sirdar, is by a suit founded upon the decree.

Where a Court on the application of a decree holder made an order for execution, and such order was set aside (on appeal) on the ground that such Court had no jurisdiction to entertain the application :—*Held* that the decree-holder, having invoked the jurisdiction of the Court, was estopped from calling in question an order subsequently passed by it, directing him to refund a sum realized under the order for execution.

THIS was a miscellaneous special appeal against the order of W. H. Newnham, Judge of Puna, reversing the order of the Subordinate Judge of Khed.

The Court of the Agent for Sirdars at Puna made a decree in favour of one Mahadev against a Sirdar, the grandfather of Sakharam Ramchandra, the respondent. The appellant Govind purchased this decree, and the Sirdar, being dead, applied to the Subordinate Judge of Khed for its execution against Sakharam, his heir. The application having been complied with, Govind recovered Rs. 121 from Sakharam. Sakharam appealed against this order, and it was ultimately decided by the High Court that the Subordinate Judge had no jurisdiction to execute a decree of the Agent's Court. Sakharam, therefore, again applied to the Subordinate Judge for a refund of the sum irregularly levied. The Subordinate Judge rejected the application; but the District Judge, on appeal, reversed his order, and ordered the refund on the authority of *Nagindas Devchand v. Natha Pitamber*(1) and *Narsing v. Bidhyadhurce*(2).

* Miscellaneous Special Appeal, No. 12 of 1877.

(1) 10 Bom. H. C. Rep. 297. (2) Calc. W. R. 275, Civ. Rul.

Ganesh Hari Patvardhan for the appellant.—In the similar case of *Ganesh Daji v. Sakharam Ramchandra*, (1) Melvill and Pinhey, JJ., held that the refund could not be ordered, and directed the judgment-debter to pay again, and then proceed to recover the money, if he could, by a regular suit. The Subordinate Judge could not, as there held, summarily undo what he had done.

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 GOVIND
 VAMAN
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 SAKHARAM
 RAMCHANDRA

No one appeared for the respondent.

WESTROPP, C. J.—It may be that the appellant (plaintiff) is, if he had proceeded regularly, entitled to recover against the respondent the amount of the decree obtained in the Court for Sirdars against his grandfather Moreshwar Dixit. But the remedy of the plaintiff for enforcement, against the deceased Sirdar's grandson, of that decree is a suit and not execution process founded directly upon such decree: *Khusaldas v. Sakharam*, (2) The execution, therefore, which has been had in the Subordinate Judge's Court directly upon the decree made by the Court for Sirdars, was irregular. We are unable to adopt the ruling in Miscellaneous Special Appeal 11 of 1877 (*Ganesh Daji v. Sakharam Ramchandra*) to the effect that the Subordinate Judge's Court, which ordered and carried into effect that execution, had not authority to direct a refund of the moneys thus irregularly levied. The party here (the plaintiff) who put the Subordinate Judge's Court in motion to execute the decree, and thus submitted himself to the jurisdiction of that Court, is, by his own act, estopped from saying that the same Court has not jurisdiction to retrace its steps, and to replace the parties in the position which they occupied before the irregular execution was had. Accordingly, we must affirm the order of the District Judge.

Order affirmed.

(1) Miscellaneous Special Appeal, No. 11 of 1877, decided 28th August 1877.
 See Painted Judgments for 1877, p. 227.

(2) 12 Bom. H. C. Rep., 212.