

4 B. 123.

[123] APPELLATE CIVIL.

Before Mr. Justice Kemball and Mr. Justice F. D. Melvill.

RAVLOJI TAMAJI (*Original Plaintiff*), Appellant v. DHOLAPA
RAGHU (*Original Defendant*), Respondent.*
[6th October, 1879.]

1879
OCT. 6.
APPEL-
LATE
CIVIL.
4 B. 123.

Civil Procedure Code (Act VIII) of 1859, s. 229—Subject-matter of suit—Execution—Appeal—Jurisdiction.

The plaintiff obtained a decree against T, A, and J in a suit, the subject-matter of which exceeded Rs. 5,000, and, in part execution thereof, attached property worth less than that amount. D having resisted the execution of the decree, the plaintiff's claim was numbered and registered as a suit under s. 229 of Act VIII of 1859. Upon investigation, the First Class Subordinate Judge made an order staying execution of the decree. The plaintiff appealed to the District Judge, who held that no appeal lay to him, as the subject-matter of the original suit, out of which the execution suit arose, exceeded Rs. 5,000. The plaintiff appealed against this decision to the High Court.

Held, that the investigation of claim under s. 229 of Act VIII of 1859 is not to be regarded as a fresh suit, but is merely a continuation of the original suit, and that there was, therefore, no appeal against the order in question to the District Judge.

[*Diss.*, 4 B. 515 (527); R., 22 C. 890; 8 M. 548 (F.B.); 13 M. 520; D., 14 B. 627 (631); 4 M. 220; 6 Bom. L.R. 301 (302).]

THIS was a second appeal from the decision of C. F. H. Shaw, Judge of Belgaum, refusing to entertain an appeal from an order made by the Subordinate Judge of Belgaum.

The plaintiff Ravloji in 1871 sued Tanibai, Ahilyabai and Jotirav in the Court of the Subordinate Judge of Belgaum, who passed a decree awarding him possession of property considerably over Rs. 5,000 in value. In 1875 the plaintiff applied for execution of that decree, and attached certain fields paying an annual assessment of Rs. 39, and worth a great deal less than Rs. 5,000. The defendant Dholapa resisted the execution in 1876, and the plaintiff's claim was, under s. 226 of the then Code of Civil Procedure, registered as a suit by the Subordinate Judge, who tried it on the merits, and rejected the claim.

The plaintiff thereupon preferred an appeal to the District Judge, who held that no appeal lay to him, as the subject-matter of the original suit, out of which this execution suit arose, exceeded Rs. 5,000. The plaintiff appealed against this decision of the District Judge.

[124] *Manekshah Jehangirshah*, for the appellant.—The provision which gives an appeal against the order of the Subordinate Judge is s. 231 of Act VIII of 1859. It provides that the decision * * * shall be subject to appeal under the rules applicable to appeals from decrees. Section 26 of the Bombay Civil Court's Act (XIV of 1869) gives a direct appeal to the High Court from decisions of First Class Subordinate Judges where the amount or value of the subject-matter exceeds five thousand rupees. The present investigation and the original suit involve entirely different disputes with respect to different amounts, and, therefore, the subject-matter is not the same. In attempting to enforce a decree it may become necessary to attach several small properties in the hands of different people, and

* Second Appeal No. 268 of 1879.

1879
OCT. 6.
—
APPEL-
LATE
CIVIL.
—
4 B. 123.

it would be a hardship if it were ruled that in each petty matter an appeal must be made to the High Court.

Ghanasham Nilkanth for the respondent.—The present suit under s. 226 of the Code of Civil Procedure is only an offshoot of the original suit, and is an attempt, though partial, to carry out the decision in that suit. The subject-matter in both the suits are, therefore, the same. *Krishnarav v. Vasudev* (1) seems to be an analogous case to the present.

JUDGMENT.

KEMBALL, J.—The plaintiff in this case obtained a decree in the Court of the First Class Subordinate Judge at Belgaum in a suit wherein the subject-matter exceeded in value Rs. 5,000; and in part execution thereof he attached certain fields, of a value admittedly very much below Rs. 5,000, as the property of his judgment-debtor. The present defendant obstructed the execution, whereupon the plaintiff, as decree-holder, applied to the Court of the First Class Subordinate Judge under the provision of s. 226 of Act VIII of 1859. Investigation followed, and eventually the claim was numbered and registered as a suit, as required by s. 229 of the same Code, and in the end the Court found against the plaintiff's right to execute his decree against the said fields. Plaintiff then appealed to the District Judge; but that Court held that, under the circumstances, the appeal lay, not to him but to the High Court; and the only question which we are [125] asked to decide is, whether the District Judge was right in so holding.

It is argued for the appellant that the subject-matter in dispute in the investigation under s. 229 is not the subject-matter in dispute in the suit. But if, as we understand to be conceded, the execution of a decree is a part of the proceedings in a suit, we can see no indication, in the language of the said section, of an intention on the part of the Legislature to dissociate the investigation from the rest of the execution proceedings. The claim, it is true, is to be investigated in the same manner and with the like power as if a suit for the property had been instituted by the decree-holder against the claimant; but that it is not a fresh suit but a mere continuation of the original suit is, we think, sufficiently indicated by the direction to the Court to pass an order for either "staying execution of the decree or executing the same." The word "staying" is perhaps somewhat misleading, as pointing possibly to some other than the final order to be made; but when we refer to the corresponding (s. 331), as it now stands, of the new Civil Procedure Code (X of 1877) it is, we think, clear that the Legislature intended that the order contemplated in ss. 229 and 231 of Act VIII of 1859 should be either for repressing or carrying out execution.

We must, therefore, hold that the order made by the First Class Subordinate Judge under s. 229 was made in a suit of which the subject-matter exceeded in value Rs. 5,000, and that the District Judge was right in holding that he had no jurisdiction to hear an appeal against it.

The decree of the District Judge is accordingly confirmed with costs.

Decree affirmed.