

## APPELLATE CIVIL.

*Before Sir M. R. Westropp, Kt., Chief Justice, and Mr. Justice Pinhey.*

VISHNU DIKSHIT, PLAINTIFF, v. NARSINGRAV AND ANOTHER,  
DEFENDANTS.\*

1882  
January 10.

*Jurisdiction—Collateral inquiry into a mortgage lien on attached property—  
Insolvency of a judgment-debtor.*

The plaintiff obtained a decree against N. and R. for Rs. 165-11-0 in the First Class Subordinate Court of Sâtára, and applied for execution against the person of R. When brought before the Court, R. applied to be declared an insolvent under section 344 of the Civil Procedure Code (Act X) of 1877. The plaintiff then moved the Court to strike off his application for execution, and to send his decree to the Second Class Subordinate Court of Vita for execution. The Sâtára Court, accordingly, sent the decree to the Vita Court, and granted a certificate to the plaintiff under sections 223 and 224 of the Civil Procedure Code. The Sâtára Court also informed the Vita Court that proceedings were pending in the Sâtára Court regarding the insolvency of R. On the application of the plaintiff the Vita Court attached certain immoveable property as belonging to N. and R. Thereupon one V. T. claimed a mortgage lien on it for Rs. 9,415-9-3. The Vita Court, therefore, referred for the opinion of the High Court the questions whether it had jurisdiction to inquire into the validity of the mortgage lien claimed by V. T., and whether the execution of the decree in the Vita Court was to be stayed pending the inquiry into the alleged insolvency of R. in the Sâtára Court.

*Held* that the Vita Court had jurisdiction to inquire into the validity of the alleged mortgage lien; that execution in that Court against R. was to be stayed pending the inquiry in the Sâtára Court regarding his alleged insolvency, but that there was no reason for staying the execution of the decree against N. in the Vita Court.

UNDER section 617 of the Civil Procedure Code (Act X of 1877) this case was referred for the opinion of the High Court by the Second Class Subordinate Judge of Vita in the district of Sâtára.

On the 18th February, 1880, the plaintiff Vishnu Dikshit obtained a decree against Narsingrav and his brother Rangoji for Rs. 165-11-0 in the Court of the First Class Subordinate Judge of Sâtára. The plaintiff then applied to the Court for the execution of that decree by the arrest and imprisonment of the second defendant, Rangoji. When Rangoji was brought before the Court, he applied to be declared an insolvent under section 344 of the Civil Procedure Code (Act X of 1877), and filed a list

\* Civil Reference No. 14 of 1881.

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of his property and creditors. The plaintiff thereupon moved the Court to strike off his application for execution, and to send his decree to the Second Class Subordinate Court of Vita for execution. The Subordinate Judge of Satara accordingly sent the decree to the Subordinate Court of Vita for execution, and granted a certificate to the plaintiff under sections 223 and 224 of the Code. The Subordinate Judge of Satara also informed the Subordinate Judge of Vita that proceedings were pending in the Satara Court regarding the insolvency of the second defendant, Rangoji. On the 25th November, 1880, the plaintiff applied to the Subordinate Court of Vita for the attachment and sale of certain immoveable property (a house and an *inam* village) belonging to Narsingrav and Rangoji. On the attachment of the property by the Court, one Vishnu Trimbak appeared before it, and claimed a mortgage lien on the *inam* village for Rs. 9,415-9-3. The Subordinate Judge of Vita, therefore, referred for the opinion of the High Court the questions whether he had jurisdiction to inquire into the alleged mortgage lien of Vishnu Trimbak, and whether the execution of the decree was to be stayed in his Court either against both the defendants or against the second defendant (Rangoji), pending the inquiry in the Subordinate Court of Satara regarding the alleged insolvency of Rangoji.

The Subordinate Judge of Vita was of opinion that he had no jurisdiction to inquire into the alleged mortgage lien of Vishnu Trimbak, inasmuch as the amount of it exceeded Rs. 5,000, which was the limit of the pecuniary jurisdiction of his Court; that there was no necessity for staying the execution proceedings in his Court pending the inquiry into the alleged insolvency of the defendant (Rangoji) in the Subordinate Court of Satara.

*G. R. Kirloskar* appeared for the plaintiff, and cited *Purshotam Sideshwar v. Dhondu Amrit* on the question of jurisdiction.

*G. N. Nadkarni* appeared for the defendants.

WESTROPP, C. J.—We think, first, that the Subordinate Judge of Vita has jurisdiction to inquire into the validity of the alleged mortgage lien for Rs. 9,415-9-3 claimed by Vishnu Trimbak;

(1) See *supra*, p. 582.

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that inquiry being only collateral to the main question before that Judge, viz., the right and manner of attachment and sale of the *inam* village within the local jurisdiction of the same Subordinate Judge, and such attachment and sale being in respect of the decree in favour of the plaintiff (Vishnu Dikshit) for an amount less than Rs. 5,000. See *Purshotam Sideshwar v. Dhondu Amrit*(1).

Secondly, we are of opinion that execution in the Court of the Subordinate Judge of Vita against the second defendant (Rangoji) ought to be stayed pending the inquiry in the Court of the First Class Subordinate Judge of Satara into the right of that defendant to be dealt with as an insolvent under the Civil Procedure Code.

Thirdly, we do not perceive any reason for staying proceedings in the Court of the Subordinate Judge of Vita against the first defendant (Narsingray) in respect of the execution of the plaintiff's decree against the right, title and interest of Narsingray in the *inam* village attached by that Court.

(1) See *supra*, p. 582.

## APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Melvill.

July 12.

VITHAL JANARDAN, PLAINTIFF, v. VITHOJIRAV PUTLAJIRAV;  
DECEASED, BY HIS WIDOW RAKMI AND OTHERS, DEFENDANTS.\*

*Certificate of sale, application for—Limitation—Act XV of 1877, Schedule II, Article 178—Act X of 1877, Sections 316, 318 and 319—Purchaser's right to certificate of sale—Res judicata.*

Clause 178, Schedule II of the Limitation Act XV of 1877 is not applicable to applications for certificates of sale.

*Re Khaja Patthanjee*(1) dissented from.

The provisions of the Indian Limitation Act (No. XV of 1877) do not apply to applications to a Court to do what it has no discretion to refuse, nor to applications for the exercise of functions of a ministerial character.

*Kylasa Goundan v. Ramasami Ayyan*(2) followed.

\* Civil Reference, No. 27 of 1832.

(1) I. E. R., 5 Bom., 202.

(2) I. L. R., 4 Mad., 172.