

1882

VITHAL  
JANARDAN  
v.  
VITHOJIRAY  
PUTLAJIRAV.

*Mangal Pershad Dichit v. Grija, Kant Lahirt* (1) and by this Court in *Manjunath Badrabhat v. Venkatesh Govind* (2) that by the grant of the certificate the question became *res judicata*, and that it was not competent to the Subordinate Judge to go behind the act of his predecessor.

We have consulted our brothers Kemball and West, and they concur in the view which we have expressed.

(1) L. R., 8 Ind App. 123.

(2) See *supra*, p. 54.

### APPELLATE CIVIL.

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

July 2.

PURSHOTAMDASS TRIBHOVANASS AND ANOTHER, PLAINTIFFS, v. MAHANANT SURAJBHARTHI HARIBHARTHI, DEFENDANT, AND TRIKAMLAL MANCHARAM, PLAINTIFF, v. MAHANANT SURAJBHARTHI, DEFENDANT.\*

*Civil Procedure Code Act X of 1877, Section 295—Assets realized by sale or otherwise.*

Money paid by a judgment-debtor under arrest, in satisfaction of the decree against him, are not assets realized by sale or otherwise, under section 295 of the Civil Procedure Code Act X of 1877.

Section 295 of the Civil Procedure Code Act X of 1877 must be read as if the words "from the property of the judgment-debtor" were inserted after the word "realized".

THIS was a reference by Rao Bahadur Mukanrae Manirae, First Class Subordinate Judge of Ahmedabad, under section 617 of the Civil Procedure Code Act X of 1877.

The facts of the case, as stated by the Subordinate Judge, are briefly these :—The plaintiff in the first case held a money-decree against the defendant for Rs. 1,039, and applied for the execution of it by the arrest and imprisonment of the judgment-debtor. The judgment-debtor was, accordingly, arrested under a warrant from the Court, but before he was sent to jail he paid Rs. 667-12-11 in full satisfaction of the decree, and was released. In the meantime the plaintiff in the second case, who also held a money-decree against the defendant, had applied for the execution of his decree by the attachment and sale of the defendant's

\*Civil Reference, No. 19 of 1882.

moveable property. This judgment-creditor now claimed a share in the money paid by the defendant as stated above, and contended that he was entitled to it under section 295 of the Civil Procedure Code Act X of 1877. The Subordinate Judge, therefore, submitted the following question for the decision of the High Court:—"Whether money paid by a judgment-debtor under arrest, in full satisfaction of the decree against him, can be regarded as assets realized by sale or otherwise, under section 295 of Act X of 1877, and whether other creditors who have in the meantime applied for the execution of their decrees against the same debtor can claim a share in the money under that section?"

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The Subordinate Judge gave his opinion in the negative. He observed: "The word 'otherwise' used in the said section has a very broad meaning, and is likely to be misconstrued. I, therefore, think it right to obtain an authoritative decision on the point before disposing of the question. I am of opinion that section 295 is not applicable to payments made in satisfaction of decrees by judgment-debtors under arrest. That section occurs under the heading of 'sale and delivery' of property, while the money has been realized under the provisions contained under a distinct heading, viz., 'arrest and imprisonment'. The provision in the old Code (section 270 of Act VIII of 1859) applied only to money realized by the sale of property, and the addition of the word 'otherwise' in section 295 of the new Code cannot, I think, be intended to extend to all realizations made, except those accruing consequent on applications for execution by attachment and sale of property. Realizations may be made otherwise than by sale, such as under section 305. Hence the necessity for inserting the word 'otherwise' in section 295."

There was no appearance of parties in the High Court.

SARGENT, C. J.—We think the question must be answered in the negative. Section 295 is one of a number of sections under the heading of general rules as to the sale and delivery of property, and must, we think, be read as if the words "from the property of the judgment-debtor" were inserted after the word "realized". The provisions contained in sections 291, 305 and 322 are all modes of realizing assets from such property "otherwise"

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than by sale, and are sufficient to account for the introduction of that expression into section 295. This view is also confirmed by clause (b), section 341, which provides for the discharge of the judgment-debtor from arrest "at the request of the person on whose application he has been imprisoned", which seems to assume that the arresting creditor may avail himself of the arrest to enter into any arrangement he thinks proper, with the debtor behind the back and independently of other creditors who may have applied for execution.

### APPELLATE CIVIL.

*Before Mr. Justice Melvill and Mr. Justice West.*

July 20.

THE COLLECTOR OF RATNAGIRI (ORIGINAL APPLICANT), APPELLANT, v. JANARDAN VITHAL KAMAT (ORIGINAL PLAINTIFF), OPPONENT.\*

*Civil Procedure Code (Act X of 1877), Section 244, Clause (c), and Section 412—Suit in forma pauperis—Order as to costs—Appeal—Jurisdiction.*

A Subordinate Judge admitted a plaint *in forma pauperis*, but, holding that he had no jurisdiction to try the suit, returned the plaint to the plaintiff for its presentation in the proper Court, and ordered each party to pay his own costs. After the presentation of the plaint in another Court, and before the termination of the suit, the Collector applied to the Subordinate Judge for execution of the order as to costs, by seeking to recover the amount of the stamp duty from the plaintiff. The Subordinate Judge refused to execute the order, on the ground that the pauper suit was still pending in another Court. His order was affirmed by the District Judge in appeal. On second appeal to the High Court.

*Held* that there was no appeal, and, therefore, no second appeal, under section 244, clause (c), of the Civil Procedure Code (Act X of 1877), against the order of the Subordinate Judge refusing execution of the order as to costs, inasmuch as the question was not between the parties to the suit.

*Held* further that, under section 412 of Act X of 1877, the Subordinate Judge had no jurisdiction to make the order for payment of court fees by the plaintiff.

The High Court, accordingly, in the exercise of their extraordinary jurisdiction, annulled the Subordinate Judge's order about costs, and all the subsequent proceedings consequent upon that order.

THIS was an appeal against the decision of C. B. Izon, District Judge of Ratnagiri, affirming the order of P. B. Joshi, Second Class Subordinate Judge of Vengurla.

\* Second Appeal, No. 485 of 1881, converted into Application No. 79 of 1882 under Extraordinary Jurisdiction.