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BHOVANDASS

v.

MAWANANT
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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.

The opponent Janardan presented a plaint in *forma pauperis* in the Subordinate Court of Vengurla. The Subordinate Judge, after inquiry, held the plaintiff's pauperism proved, but found that he had no jurisdiction to try the suit. He, accordingly, returned the plaint to the plaintiff for its presentation in the proper Court, and made an order that each party was to bear his own costs. The plaintiff thereupon filed the plaint in the Court of the First Class Subordinate Judge of Ratnagiri, and was allowed by that Court to sue as a pauper. The Subordinate Judge of Vengurla, as usual, sent a copy of his order as to costs to the Collector of Ratnagiri, in order to enable that officer to recover the amount of court fees from the plaintiff. The Collector thereupon applied to the Subordinate Judge of Vengurla for execution of that order, praying for the recovery of the stamp duty from the plaintiff. The Subordinate Judge on the 1st March, 1881, rejected the Collector's application, on the ground that the pauper suit was still pending in the Subordinate Court of Ratnagiri. That order was upheld by the District Judge in appeal.

The Collector appealed to the High Court.

Nanabhai Haridas, Government Pleader, appeared for the Collector.

Manekshah Jehangirshah for the opponent contended that, as the Collector was no party to the suit, there was no appeal, and, consequently, no second appeal, under section 244, clause (c), and section 588 of Act X of 1877.

Nanabhai Haridas submitted that the order made by the Subordinate Judge of Vengurla as to costs was illegal under section 412, and all subsequent proceedings, therefore, were illegal. He prayed that they might be annulled.

MELVILL, J.—We think that there was no appeal, and, of course, therefore no second appeal, against the order of the Subordinate Judge refusing execution of the order as to costs; because the question is one arising, not between the parties to the suit (clause (c), section 244 of Act X of 1877), but between the Collector who is a third party and one of the parties to the suit. As the matter, however, has been brought before us, and inasmuch as it appears to us that the original order for payment by the plaintiff of court

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fees was not one which the Subordinate Judge had jurisdiction to make under section 412 of Act X of 1877, we, in the exercise of our extraordinary jurisdiction, annul that order and with it all proceedings consequent upon the order, including the orders passed by the two lower Courts on the Collector's application No. 344 of 1880.

Orders and proceedings annulled.

APPELLATE CIVIL.

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

July 27.

SADU, APPLICANT, v. SAMBHU, OPPONENT.*

*Dekkhan Agriculturists' Relief Act XVII of 1879—Immoveable property—
 Standing crops.*

Standing crops are immoveable property within the meaning of section 22 of the Dekkhan Agriculturists' Relief Act (XVII of 1879), as well as within the Code of Civil Procedure, and not liable to attachment and sale in execution of money decrees, unless specifically pledged.

THIS was a reference, under section 617 of the Civil Procedure Code Act X of 1877, from Rao Saheb J.S.B. Inamdar, Subordinate Judge of Rahimatpur.

The question submitted by him was "whether standing crops (that is, crops of sugar-cane) must be regarded as immoveable property within the meaning of section 22 of the Dekkhan Agriculturists' Relief Act (XVII of 1879), and, as such, whether they are attachable and saleable in execution of money decrees?"

The Subordinate Judge referred to the following cases:—*Ananda v. Manaji*(1); *Kirpashankar v. Govind*(2); *Nagapa Hegde v. Timaya Hegde*(3).

The Subordinate Judge was of opinion that these authorities did not touch the question submitted, and on a construction of section 22 of the Relief Act held that standing crops were not immoveable property, and were not exempt from attachment and sale in execution of money decrees against agriculturists.

* Civil Reference, No. 30 of 1882.

(1) Civ. Ref. No. 17 of 1880, Printed Judgments for 1880, p. 274.

(2) Civ. Ref. No. 30 of 1880, Printed Judgments for 1880, p. 329.

(3) Civ. Ref. No. 43 of 1881, Printed Judgments for 1882, p. 73.