

APPELLATE CIVIL.

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

BHIKU BAL PATIL (*Petitioner*) v. KHEMCHAND KUBERSHET  
(*Opponent*).\* [4th July, 1889.]

*Civil Procedure Code (Act XIV of 1882), s. 287, Rule I of High Court under, and s. 278—Construction—Jurisdiction—Practice.*

Under s. 287 of the Civil Procedure Code (Act XIV of 1882) and the Rules of the High Court made thereunder, a Court cannot refuse to execute its [370] own decree ordering the sale of immoveable property in the possession of a third party under a valid title. Rule I of the High Court Rules (1) under that section permits inquiry into the title of the judgment-debtor in respect of moveable property only. Nor can a claim set up in an investigation held under s. 287 be treated as a claim under s. 278, the latter section having reference to claims to, and objections to attachment of property under attachment.

THIS was a reference by Rao Saheb D. N. Ranadive, Subordinate Judge of Panvel, under s. 617 of the Civil Procedure Code (Act XIV of 1882).

The questions referred for the High Court's decision were:—

1. "Whether under s. 287 of the Civil Procedure Code and the rules made by the High Court under it, a Court can refuse to execute its own decree ordering sale of immoveable property if it finds that a third party is in possession under a valid title?

2. "If not, can a claim preferred in the course of an investigation held under s. 287 be treated as a claim under s. 278 and be treated accordingly?"

The Subordinate Judge's opinion on both the points was in the negative.

There was no appearance for the parties.

OPINION.

SARGENT, C. J.—The first question must be answered in the negative. Rule I under s. 287, which permits enquiry as to the judgment-debtor's title, relates only to *moveable* property.

The second question must also be answered in the negative. Section 278 refers to claims to, and objections to attachment of attached property. Here the property was not attached.

\* Civil Reference, No. 3 of 1889.

(1) "Whenever, in execution of a decree, application shall have been made to any Court for the sale of moveable property attached otherwise than by prohibitory order, the Court may, if it thinks proper, make an inquiry as to the judgment-debtor's title to such property, but will not ordinarily do so, except on the application of some one interested \* \* \*."

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