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simple interest on the said sum of Rs. 9,900 from 4th April, 1881, to 7th January, 1887, and, in default of payment, his mortgage will be fore-closed.

Defendants must have the costs of this appeal. Each party to pay his own costs in the Court below.

Decree amended.

18 B. 35.

APPELLATE CIVIL.

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

MOTILAL KASHIBHAI (*Original Plaintiff*), Applicant v. NANA alias LANGDA MUKUND PATIL (*Original Defendant No. 2*), Opponent.*
[25th November, 1892.]

Civil Procedure Code (Act XIV of 1882), s. 622—Application and purpose of the section—Revision.

An application under s. 622 of the Civil Procedure Code (Act XIV of 1882) cannot be entertained in the case of those interlocutory orders against which, though no immediate appeal lies, a remedy is supplied by s. 591, which provides that they may be made a ground of objection in the appeal against final decree.

The purpose with which s. 622 was framed was to enable a party to a suit to get a decision or order of a lower Court rectified by the High Court where there would otherwise be no remedy.

[F., 30 M. 230=17 M.L.J. 79=2 M.L.T. 88; 19 A.W.N. 210 (211); 4 Ind. Cas. 878=12 O.C. 405 (411); 25 Ind. Cas. 191=16 M.L.T. 101; Appl., 11 O.C. 233 (239); 1 S.L.R. 120; R., 34 A. 592=10 A.L.J. 130=16 Ind. Cas. 1; 14 P.R. 1904=140 P.L.R. 1904; 22 P.L.R. 1900; 2 S.L.R. 22 (23).]

THIS was an application under the extraordinary jurisdiction of the Court, under s. 622 of the Civil Procedure Code (XIV of 1882), against an interlocutory order passed by Rao Saheb Prabhakar Vitthal Gupte, Second Class Subordinate Judge of Bassein.

Plaintiff Motilal Kashibhai brought a suit against (1) Raghunath Patil, (2) Nana, and (3) Botmaria, to recover possession of a house. On the day of fixing issues Nana alone appeared, and after the settlement of issues the hearing was adjourned till the 1st [36] December, 1891, on Nana's application to enable him to instruct a pleader. On the day so fixed for hearing, all the defendants being absent, the Court passed a decree for the plaintiff. On the 6th December, 1891, Nana and Botmaria applied to the Court to set aside the decree and restore the suit to the file, stating that they had been prevented by accident from attending the Court on the day fixed. The Court, thereupon, issued notice to the plaintiff to show cause why the decree should not be set aside and the suit restored to the file for rehearing, and, after having heard both the sides, passed an order setting aside the decree and directing the suit to be proceeded with only so far as Nana was concerned. The decree with respect to the other two defendants was allowed to stand, because Raghunath had not appeared at all, and Botmaria had not appeared on the day on which the issues were settled.

Against the order setting aside the decree with respect to Nana, the plaintiff applied to the High Court, and obtained a rule *nisi*, to set aside the order under s. 622 of the Civil Procedure Code (XIV of 1882).

* Application under Extraordinary Jurisdiction, No. 142 of 1892.

Govardhanram M. Tripathi, appeared for the opponent Nana to show cause.—We take a preliminary objection, and submit that this application cannot be entertained under s. 622 of the Civil Procedure Code, inasmuch as s. 591 has provided a remedy in case of orders such as the one now in question—*Chattar Singh v. Lekhraj* (1); *Farid Ahmad v. Dulari Bibi* (2); *In re Nizam of Hyderabad* (3).

Ganesh Krishna Deshamukh, for the applicant, in support of the rule.—Interlocutory orders such as the one in question can be interfered with under s. 622 of the Civil Procedure Code—*Dhapi v. Ram Pershad* (4) The exercise of the extraordinary jurisdiction is discretionary, the true interpretation of s. 622 being that, in case of orders which are appealable, the High Court cannot interfere, and that, in the case of those which are unappealable, the High Court has a discretion to interfere, which will be exercised with regard to the circumstances of each case.

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JUDGMENT.

[37] SARGENT, C. J.—The expression “case” in s. 622 of the Code of Civil Procedure may be, as stated by the Court in *Dhapi v. Ram Pershad* (4), wide enough to include an interlocutory order. But a word of such general import must be controlled by due regard to the purpose with which s. 622 was framed. This, it cannot be doubted, was to enable a party to a suit to get a decision or order of a lower Court rectified by the High Court, when there would otherwise be no remedy. In the case of those interlocutory orders (such as the present one), against which no immediate appeal lies, a remedy is still supplied by s. 591, which provides that the order may be made ground of objection in the appeal against the final decree. We may remark that the Madras and Allahabad High Courts in *In re Nizam of Hyderabad* (3) and *Chattar Singh v. Lekhraj* (1), differing from the Calcutta High Court, take this view of the section.

We must, therefore, discharge the rule, with costs.

Rule discharged.

18 B. 37.

APPELLATE CIVIL.

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

NAMDEV (*Original Defendant*), Appellant v. RAMCHANDRA GOMAJI MARWADI (*Original Plaintiff*); Respondent.* [5th December, 1892.]

Decree—Execution—Auction-purchaser—Symbolical possession—Judgment-debtors remaining in actual possession—Subsequent attempt by purchaser to take possession—Obstruction—Application to remove obstruction—Application converted into a suit under s. 331 of Civil Procedure Code (XIV of 1882)—Limitation—Adverse possession—Limitation Act (XV of 1877), s. 3, and sch. II, arts. 138, 144, 167—Civil Procedure Code (XIV of 1882), ss. 328, 329, 331.

The plaintiff purchased the property in dispute at an auction sale in execution of a decree, and on the 14th August, 1877, he took formal possession, but the judgment-debtors remained in actual possession. On 18th September, 1889, the plaintiff proceeded to take possession, but was obstructed by the defendant, who alleged that he had purchased the property from the judgment-debtors in

* Second Appeal No. 863 of 1891.

(1) 5 A. 293.

(2) 6 A. 293.

(3) 9 M. 256.

(4) 14 C. 763 (780).