

to a proceeding of this nature, only enabled him to order a fresh notice to issue, and, if he thought proper, to order plaintiff to pay the costs occasioned by the necessary postponement. We must, therefore, discharge the order, and direct the Subordinate Judge to proceed according to law. Costs of this appeal to be costs in the plaintiff's application.

*Order discharged.*

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[61] APPELLATE CIVIL.

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

KRISHNA VELJI MARWADI (*Original Opponent*), Applicant v.  
BHAU MANSARAM (*Original Petitioner*), Opponent.\* [3rd August, 1893.]

*Civil Procedure Code (XIV of 1892), ss. 25 (1) and 647—Decree—Execution—Transfer of execution proceedings from one Court to another—Small Cause suit—Act VI of 1892, s. 4—Rateable contribution—Civil Procedure Code (XIV of 1882) ss. 295 and 223 (d)—Discretion of District Judge—Extraordinary jurisdiction of High Court.*

A District Judge has power, under s. 25 of the Civil Procedure Code (XIV of 1892), or under that section read with s. 647, to transfer execution proceedings in a Small Cause Court to the Court of a Subordinate Judge. The ruling in the case of *Balaji Ranchoddas* (2), that these sections apply to execution proceedings in Small Cause Courts, is not affected by the explanation to s. 4 of Act VI of 1892.

Execution proceedings under a decree against A in a Small Cause Court were transferred by a District Judge to a Subordinate Judge's Court where execution was proceeding against A under another decree, and it was objected that, as by the concluding paragraph of s. 25 of the Civil Procedure Code (XIV of 1892), the attachments under the two decrees would be in different Courts, s. 295 of the Code would not apply, and rateable distribution could not be granted.

*Held*, that the last paragraph of s. 25 did not convert the Subordinate Judge's Court into a Small Cause Court, but only provided for the trial of the suit, which had been transferred, being conducted by the Subordinate Judge's Court as a Small Cause suit.

[62] The High Court will not in its extraordinary jurisdiction interfere, except under circumstances of a very special nature, with the discretion of a Judge who has transferred execution proceedings under a decree from one Subordinate Court to another.

*Quere*—Whether a Subordinate Judge under cl. (d) of s. 223 of the Civil Procedure Code (XIV of 1892), can transfer a decree for execution to a Court of Small Causes when the property attached is situate within the local jurisdiction of the Subordinate Judge.

\* Application No. 217 of 1892 under Extraordinary Jurisdiction.

(1) Section 25, Civil Procedure Code (XIV of 1892) :—

The High Court or District Court may, on the application of any of the parties, after giving notice to the parties and hearing such of them as desire to be heard, or of its own motion without giving such notice, withdraw any suit whether pending in a Court of first instance or in a Court of appeal subordinate to such High Court or District Court, as the case may be, and try the suit itself, or transfer it for trial to any other such Subordinate Court competent to try the same in respect of its nature and the amount or value of its subject-matter.

For the purpose of this section the Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court.

The Court trying any suit withdrawn under this section from a Court of Small Causes, shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(2) 5 B. 680.

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[F., 22 B. 778 (781); R., 18 B. 458 (463); 19 B. 276 (280); 12 Ind. Cas. 357=7 N. L. R. 130; 1 O. C. 117 (118); U. B. R. (1905) 3rd Qr. C. P. C. 28.]

THIS was an application under the extraordinary jurisdiction, (s. 622 of the Civil Procedure Code, Act XIV of 1882), against an order passed by W. H. Crowe, District Judge of Poona.

Krishna Velji Marwadi, the applicant, obtained a decree against one Gumna Damber in the Court of Small Causes at Poona, and in execution attached his moveable property. In the meanwhile the opponent, Bhau Mansaram, who had obtained a decree in the High Court at Bombay, on its original side, for Rs. 13,446-14-6 against the said Gumna Damber and one Moti Rasa, got the decree of that Court transferred to the Court of the First Class Subordinate Judge of Poona for execution, and levied an attachment on the property, which, as above stated, was already attached in execution of the Small Cause Court's decree. The property having been thus attached under two decrees passed by two different Courts, the opponent (Bhau Mansaram) with the object of sharing in the sale-proceeds of the property, applied to the District Judge to transfer the execution proceedings of the Small Cause Court to the First Class Subordinate Judge, and asked that an order might be passed that he should share rateably in the proceeds of the execution sale. The District Judge in granting the application made the following remarks:—

"Sections 25 and 647 of the Code of Civil Procedure empower this Court to transfer such a *darkhast*. By Act VI of 1892, s. 4, s. 647 is declared not to apply to applications for execution which are proceedings in suits. The course adopted by the applicant (opponent in the High Court) is that authorized by the ruling in *Muttalgi v. Muttayyar* (1), and I can see no objection to complying with the application."

[63] The applicant then applied to the High Court under the extraordinary jurisdiction to set aside this order, contending (1) that it was passed without jurisdiction; (2) that it was contrary to the spirit and purpose of s. 25 of the Civil Procedure Code.

A rule *nisi* was granted calling on the opponent to show cause why the order should not be set aside.

*Mahadeo Chimmaji Apte*, appeared for the opponent to show cause.—We sought for the transfer of the Small Cause Court's decree to that of the Subordinate Judge, to which our decree had been already transferred, for the purpose of obtaining a share of the proceeds of the sale. Section 647 of the Civil Procedure Code read together with s. 25 empowers the District Judge to order the transfer—*Balaji Ranchoddas* (2); *Muttalgi v. Muttayyar* (1). The property attached being within the jurisdiction of the Subordinate Judge, our decree could not be transferred to the Small Cause Court.

*Ghanasham N. Nadkarni*, for the applicant, in support of the rule.—Section 25 of the Civil Procedure Code relates to suits and not to execution proceedings. The Judge had no authority to transfer the execution of the Small Cause Court decree to the Subordinate Judge. Even supposing that s. 647 read along with s. 25 does empower the Judge to order such a transfer, still as the nature of the decree of the Small Cause Court cannot be altered, the Court of the Subordinate Judge will be the Court of Small Causes with respect to that decree. The proceedings under the two decrees cannot coalesce merely because the Judge is the same, and that

being so, s. 295 of the Civil Procedure Code does not apply—*Sankappa v. Basappa* (1); *Bhagvan Dayalji v. Balu* (2); *Dharamdas v. Vaman Govind* (3). The ruling in *Balaji Ranchoddas* (4) no longer applies, because s. 4 of Act VI of 1892 enacts that s. 647 of the Civil Procedure Code does not apply to applications for the execution of decrees.

ORDER.

SARGENT, C.J.—We think that the District Judge had jurisdiction to transfer the execution proceedings in the Small Cause [64] Court to the Subordinate Court. In *Balaji Ranchoddas* (4), it was held that s. 25, Civil Procedure Code, read with s. 647 applied to such proceedings, and we do not think that ruling is in any way affected by the explanation to s. 4 of Act VI of 1892. But in any case either s. 25 alone or s. 25 read with s. 647 would give the District Court the power of transfer.

It was said, however, that when the execution proceedings in the Small Cause Court had been transferred, the attachments would then be in two Courts by virtue of the concluding paragraph in s. 25, and s. 295 would, therefore, not apply. But that paragraph does not convert the Subordinate Judge's Court into a Small Cause Court, but only provides for the trial of the suit being conducted by the Court to which it is transferred as a Small Cause Court suit. The remarks of West, J., in *Bhagvan Dayalji v. Balu* (2), where a similar question arose under Act XIV of 1869, are applicable to this case.

As to the propriety of the transfer, the question is one of discretion with the District Court, and the exercise of it could not be impeached under our extraordinary jurisdiction unless the circumstances were of a very special nature. We may, however, remark that here the opponent, who was anxious to share in the proceeds of the sale, could not get his decree transferred to the Small Cause Court for execution, as the property attached was in the local jurisdiction of the Subordinate Judge, and in that case it may well be doubted whether cl. (d) of s. 223 would enable the Subordinate Judge to transfer the decree; but in any case it would be a matter of discretion with him and in no way compulsory and it was, therefore, reasonable to transfer the Small Cause Court execution proceedings to the Subordinate Judge's Court in order to do equity between the judgment-creditors according to the spirit of the Civil Procedure Code. For these reasons we must refuse the application. Rule discharged with costs.

*Rule discharged.*

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CIVIL,  
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18 B. 61.

(1) P. J. for 1880, p. 106. (2) 8 B. 230. (3) 9 B. 237. (4) 5 B. 680.