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decree in the plaintiff's favour, the Subordinate Judge do determine what is a proper and sufficient maintenance for the defendant, and do secure the same, either by directing an investment of a sufficient part of the estate in trust for that purpose or by such other means as he may deem sufficient."

The appellants to pay the cost of this appeal.

Decree varied.

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APPELLATE CIVIL.

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

COLLECTOR OF KANARA (*Applicant*) v. RAMBHAT BIN GANESHBHAT (*Opponent*).* [23rd August, 1893.]

Pauper—Suit in forma pauperis—Costs of plaintiff—Court fees payable by plaintiff—Decree omitting to order plaintiff to pay Court fees when suit dismissed—Application by the Collector under the extraordinary jurisdiction of High Court—Practice—Procedure.

The plaintiff's suit *in forma pauperis* was rejected by the Subordinate Judge. The decree, however, omitted to order the recovery from the plaintiff of the Court fees payable in the plaint. The Collector applied to the High Court under its extraordinary jurisdiction for the rectification of the decree. It was contended that, as the omission might have been remedied by an appeal or on review, the Collector could not apply under the extraordinary jurisdiction of the Court.

Held, on the authority of *The Collector of Ratnagiri v. Janardan* (1), that no appeal by Government would lie in the case, and that in the exercise of its extraordinary jurisdiction the High Court would rectify the decree by directing the plaintiff to pay the costs of Government.

[R., 27 B. 140 (143) = 4 Bom. L.R. 974.]

APPLICATION under the extraordinary jurisdiction of the High Court (s. 622 of the Civil Procedure Code, Act XIV of 1882) [455] against the decision of the Subordinate Judge of Sirsi in the Kanara District.

The plaintiff brought a suit *in forma pauperis* against Shrinivas Subhaya and three others to set aside a certain deed. The suit was valued at Rs. 4,450, and was, therefore, liable to a Court-fee of Rs. 250, which the plaintiff would have had to pay if he had not sued as pauper. The Subordinate Judge rejected the suit and ordered the parties to bear their own costs. The decree under the head of "Plaintiff's costs" set forth a sum of Rs. 250 as the amount of Court-fees payable on the plaint, but it contained no order for the recovery of that sum from the plaintiff permitted to sue as a pauper. The Collector of Kanara applied to the High Court under its extraordinary jurisdiction, alleging that the decree was imperfect and contrary to the provisions of the Civil Procedure Code, and he prayed that the decree might be rectified.

A *rule nisi* was issued calling on the plaintiff to show cause why the Collector's prayer should not be granted.

Narayan Ganesh Chandavarkar appeared for the plaintiff to show cause.—The Collector cannot apply under the extraordinary jurisdiction. He is not a party to the suit. The non-insertion of the provision in the decree as to the payment of the Court-fees by us was an omission which

* Application No. 6 of 1893 under extraordinary jurisdiction.

(1) 6 B. 590.

might have been remedied by an application for review, or an appeal might have been preferred to the District Court—*The Secretary of State for India v. Bhagawanti Bibi* (1).

Rao Saheb Vasudeo J. Kirtikar, Government Pleader, *contra*, for the Collector in support of the rule.—The Collector was not a party to the suit and could not appeal, but he can apply under the extraordinary jurisdiction. See *The Collector of Ratnagiri v. Janardan Vitthal* (2), *The Collector of Kanara v. Krishnappa Hedge* (3). Section 412 of the Civil Procedure Code imposes an obligation upon the Court to make a provision for the payment of Court-fees by a pauper.

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ORDER.

SARGENT, C. J.—The decision in *The Collector of Ratnagiri v. Janardan* (2) is an authority that no appeal by Government would [456] lie in this case, and we think it should be followed notwithstanding the doubts expressed in *The Secretary of State for India in Council v. Bhagawanti Bibi* (1). We must, therefore, in the exercise of our extraordinary jurisdiction rectify the decree of the Subordinate Judge by directing that plaintiff do pay the costs of Government and also the costs of this application.

Rule made absolute.

18 B. 456.

APPELLATE CIVIL.

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

DATTATRAYA BIN ANNA BUBANE (*Applicant*) v. RAHIMTULLA
NURMAHOMED KHOJA (*Opponent*)* [29th August, 1893.]

Decree—Execution—Rateable distribution of assets realized in execution—Civil Procedure Code (XIV of 1882), s. 295.

R. obtained a decree against A. and another in the High Court under its original civil jurisdiction. In execution of that decree A.'s property was attached by the Second Class Subordinate Judge of Bijapur, and an order for sale was made. D. obtained a decree against A. alone in the Court of the First Class Subordinate Judge of Sholapur and obtained from that Court an order for the attachment and sale of A.'s property which was already attached by the Second Class Subordinate Judge of Bijapur. He then applied to the Second Class Subordinate Judge of Bijapur for rateable distribution of the assets realized under s. 295 of the Civil Procedure Code (Act XIV of 1882). The Second Class Subordinate Judge of Bijapur rejected the application, and D., thereupon, applied to the High Court.

Held, following *Jetha v. Najeeralli* (4) and *Krishmashankar v. Chandrasankar* (5), that D. was not entitled to share in the assets.

[R., 11 C.L.J. 69 (77)=14 C.W.N. 396=3 Ind. Cas. 105; 6 Ind. Cas. 650=47 P. W. R. 1910.]

APPLICATION under the extraordinary jurisdiction of the High Court (s. 622 of the Civil Procedure Code, Act XIV of 1882) to set aside an order of the Second Class Subordinate Judge of Bijapur made in execution of a decree.

* Application No. 237 of 1892 under extraordinary jurisdiction.

(1) 13 A. 326. (2) 6 B. 590. (3) 15 B. 77. (4) 4 B. 472. (5) 5 B. 198.