

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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18 B. 454.

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.

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APPEL-  
LATE  
CIVIL.

The opponent Rahimtulla Nurmahomed Khoja obtained a money decree against two persons, *viz.*, Anna Gangaram and another, in the High Court in its original civil jurisdiction. He obtained an order for execution from the Second Class Subordinate Judge [457] of Bijapur, who attached certain property belonging to the said Anna Gangaram and made an order for sale.

18 B. 456.

The applicant Dattatraya was the holder of a decree passed against the said Anna Gangaram alone by the First Class Subordinate Judge of Sholapur, the amount of the claim being more than Rs. 5,000, and, therefore, cognizable by that Court. In that Court he obtained an order for the attachment and sale of Anna Gangaram's property, which, as above stated, had been already attached by the Second Class Subordinate Judge of Bijapur. He then applied to the last-mentioned Court for a rateable distribution of the proceeds of the sale under s. 295 of the Civil Procedure Code (Act XIV of 1882). His application was rejected on the ground that as he held a decree against Anna Gangaram alone, he could not obtain a rateable distribution in the assets realized in execution of the opponent's decree against Anna Gangaram and another.

The applicant applied to the High Court to set aside the order of refusal, and obtained a rule.

*Narayan G. Chandavarkar* appeared for the opponent to show cause against the rule:—The application was rightly refused. The Second Class Subordinate Judge of Bijapur had no jurisdiction to entertain an application with respect to a decree passed by the Court of the First Class Subordinate Judge of Sholapur, because the decree had not been transferred to that Court for execution. Section 223 of the Civil Procedure Code (XIV of 1882) provides for the transfer of a decree to another Court for execution—*Jetha v. Najeeralli* (1); *Krishnashankar v. Chandrashankar* (2).

*Govardhanram M. Tripathi* appeared for the applicant in support of the rule.

#### ORDER.

SARGENT, C. J.—The decisions in *Jetha v. Najeeralli* (1) and *Krishnashankar v. Chandrashankar* (2) are conclusive on the question raised by the application. The rule must, therefore, be discharged with costs.

*Rule discharged.*

(1) 4 B. 472.

(2) 5 B. 198.