

1894.

ANDA'NA'PA  
v.  
BHIMRA'O  
A'NNA'JI.

ordered by an inferior Court before the attachment of such property by a Court of higher grade is not null and void in consequence of such attachment, it does not follow that the latter Court has not also power to sell the property or confirm the sale under section 305, nor is there any section of the Code which can be referred to in support of this proposition. It may be inconvenient that two Courts should have jurisdiction to sell the same property; but however this may be, it cannot, we think, be doubted that the Court of higher grade had at least concurrent jurisdiction to confirm the sale, and that having exercised its jurisdiction the applicant acquired a good title to the property sold.

Under these circumstances the application made by the applicant to the Subordinate Judge of Saundatti to confirm the sale under section 305 was superfluous and ought to have been rejected, not for the reasons given by the Subordinate Judge, but on the ground that as the sale had already been confirmed by a competent Court there remained nothing more to be done in regard to it.

The question as to the disposal of the item of Rs. 128-7-10 is a matter between the rival judgment-creditors on which we can express no opinion in this application.

Subject to the above remarks we discharge the order directing the lands to be again put up to sale, but confirm the order rejecting the prayer to confirm the sale. Parties to pay their own costs throughout.

*Rule discharged.*

## APPELLATE CIVIL.

*Before Mr. Justice Bayley, Acting Chief Justice, and Mr. Justice Fulton.*

NATHUBHAI MULCHAND AND OTHERS (ORIGINAL PLAINTIFFS), APPLICANTS, v. NANA BA'BU AND ANOTHER (ORIGINAL DEFENDANTS), OP-  
PONENTS.\*

*Decree against wrong person as representative—Execution, application for—Objection to application by person not party to decree—Failure of exercise of jurisdiction vested by law—Extraordinary jurisdiction—Civil Procedure Code (Act XIV of 1882), Sec. 622.*

A person, not a party to a suit, is not entitled to object to the issue of an order for execution of the decree.

\* Application, No. 27 of 1893, under the extraordinary jurisdiction.

1894

July 3.

A Judge having at the instance of a person not a party to a suit refused to pass an order for the execution of the decree on the judgment-creditor's application,

1894.

NATHUBHA'  
MULCHAND

v.

NANA BABA'BU

Held that in omitting to make such an order the Judge failed to exercise a jurisdiction vested in him by law and that section 622 of the Civil Procedure Code (Act XIV of 1882) was, therefore, applicable.

APPLICATION under the extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882) against an order of A. Steward, District Judge of Khándesh, in an execution proceeding.

In June, 1889, Nathubhai Mulchand (a firm at Jalgaon) obtained a decree against Vithoba Bábu as heir and legal representative of his deceased brother Nána Bábu. The plaintiffs applied for execution of the decree, and their application was opposed by Bápu Nána on the ground that Vithoba Bábu was not the legal representative of the deceased Nána, but that he (the opponent) being the adopted son of the said Nána Bábu was his legal heir and representative.

The Subordinate Judge rejected the plaintiffs' application for execution on the ground that the opponent had been adopted prior to the institution of the plaintiffs' suit; the decree could not, therefore, be enforced.

On appeal by the plaintiffs the Judge confirmed the decree. Pending appeal Bápu Nána (the opponent) having died, the name of his mother Lákshuibái was substituted as his heir.

Plaintiffs applied to the High Court under its extraordinary jurisdiction and obtained a rule *nisi* to set aside the order of the lower Courts.

*Ghanashám N. Nádkarni* appeared for the applicants (plaintiffs) in support of the rule:—We merely presented an application for the execution of the decree, and before any order for attachment or sale was passed on the application, the opponent intervened and resisted an application. He had no *locus standi* to do so. We are entitled to have execution issued, and if the opponent thinks that his rights are affected by the execution proceedings, he may then come in, and make his claim.

1894.

NATHUBHAI  
MULCHAND  
v.  
NA'NA BA'BU.

*Nárayán V. Gokhale* appeared for the opponent to show cause :  
—The plaintiff applied for execution against the wrong person  
and we intervened in order to save further litigation.

Even if the present order is wrong, still as the Court had jurisdiction to pass it, it cannot be interfered with by the High Court in its extraordinary jurisdiction under section 622 of the Civil Procedure Code (Act XIV of 1882)—*Amir Hassan Khán v. Sheo Baksh Singh*<sup>(1)</sup>; *Krishna Mohini Dossee v. Kedarnáth Chuckerbutty*<sup>(2)</sup>.

BAYLEY, C. J. (Acting) :—Without prejudice to the rights of Laxmibái (if any) to apply to raise any attachment which may be obtained by the judgment-creditor, we think that the deceased Bápu not being a party to Suit No. 507 of 1888 was not entitled to object to the issue of an order for execution of the decree, and that in omitting to make such order the Subordinate Court failed to exercise a jurisdiction vested in it by law.

We, therefore, discharge the orders of the Courts below dismissing the application for execution, and direct that the Subordinate Court do proceed with execution according to law. The opponents must pay all costs throughout.

*Order discharged.*

(1) I. L. R., 11 Calc., 6.

(2) I. L. R., 15 Calc., 446.

## APPELLATE CIVIL.

*Before Mr. Justice Bayley, Acting Chief Justice, and Mr. Justice Fulton.*

HARI RAGHUNA'TH JOSHI AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, v. KRISHNA'JI A'NANT JOSHI (ORIGINAL DEFENDANT), RESPONDENT.\*

1894.

July 9.

*Decree—Compromise of decree—Effect of compromise—Mode of enforcing agreement of compromise—Contract—Reciprocal promises—Right to sue—Decree for performance of whole contract—Contract Act (IX of 1872), Sec. 51.*

A decree for partition having been compromised by an agreement, made by the parties, and communicated to the Court which passed the decree,

\* Second Appeal, No. 770 of 1892.