

the respondent, has, if the findings of the first Court are upheld in appeal, been clearly committed upon the Court in the application for execution by reason of the false statements made by the judgment-creditor, and we cannot permit a litigant by means of proved false statements to obtain an unjust order from the Court in execution.

We, therefore, set aside the decree of the District Court and remand the case for trial on the question whether the payment was actually made or not as found by the trial Court and for disposal of the application with reference to the remarks in this judgment.

Costs will be costs in the appeal.

Decree reversed.

J. G. R.

APPELLATE CIVIL

Before Sir Basil Scott, Kt., Chief Justice and Mr. Justice Beaman.

SITABAI BHRATAR RAGHUNATH VYANKATESH VAIDYA (ORIGINAL PLAINTIFF), APPELLANT *v.* LAXMIBAI BHRATAR VYANKATESH VAIDYA AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

1915.

November 30.

Civil Procedure Code (Act V of 1908), section 16 (d)—Maintenance, suit for—Charge of maintenance—Right or interest in immoveable property—Jurisdiction.

Plaintiff S filed a suit in Poona Court against her daughter-in-law L (defendant No. 1) and her father (defendant No. 2) both of whom resided in a native state beyond the jurisdiction of the Court, for a declaration that she was entitled to a maintenance allowance and sought to make the same a charge on the immoveable property of L within the jurisdiction of the Court. The lower Court held that it had no jurisdiction to try the suit as the claim for maintenance was not one for the determination of any right to or interest in the immoveable property as required by clause (d) of section 16 of the Civil Procedure Code. The plaintiff having appealed,

Held, that the Court had jurisdiction to proceed against defendant No. 1 as the question whether or not plaintiff was entitled to a right or interest

* Appeal from Order No. 49 of 1914.

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in the immoveable property by way of charge as security for maintenance which might be decreed, was a question directly within the terms of section 16 (d) of the Civil Procedure Code, 1908.

Held, also, that the Court had no jurisdiction against defendant No. 2.

APPEAL against the order passed by H. A. Betigeri, First Class Subordinate Judge of Poona in suit No. 89 of 1912.

Suit for maintenance.

Plaintiff Sitabai sued her daughter-in-law, Laxmibai (defendant No. 1) and her father (defendant No. 2), for a declaration that she was entitled to maintenance of Rs. 50 a month for her life and for residence, pilgrimage expenses and also for Stridhana property. One of the prayers in the suit was that the liability to pay the sums claimed should be made a charge on the 1st defendant's land in the Inam village in the Bhimthadi Taluka of the Poona District. Both the defendants lived in a Native State, Ichal Karanji, under the Kolhapur State.

The preliminary question to be decided in the case was whether the suit was one which fell under section 20 of the Civil Procedure Code, 1908, or was one coming under the scope of section 16 (d) of the same.

The Subordinate Judge was of opinion that the suit did not fall under section 20 of the Civil Procedure Code, 1908, as the defendants admittedly lived outside the jurisdiction of the Court nor was it a suit falling under section 16 (d) of the Code. His reasons for holding the latter were as follows :—

“ A claim for maintenance is essentially a claim for food, raiment and residence and not a claim essentially for property, although the foundation of the claim is the possession of property by the person or persons against whom the claim is made. Such property again may be solely immoveable or solely moveable or may partake of both kinds. So a claim for maintenance may not necessarily and essentially be a claim against immoveable property. To my mind, a maintenance claim is essentially a money claim against the defendant grounded on the possession by him of property which was once

joint. Primarily therefore it is not a claim as I am persuaded to believe, for the determination of any right to or interest in immoveable property as required by clause (d) of section 16 of the Civil Procedure Code."

He, therefore, found that he had no jurisdiction to try the suit and returned the plaint for presentation to proper Court.

The plaintiff appealed to the High Court.

J. R. Gharpure for the appellant:—It was an error to hold that the suit was not one falling within the jurisdiction of the Poona Court. The suit was covered by section 16 of the Civil Procedure Code, 1908: see *Sundara Bai Sahiba v. Tirumal Rao Sahib*⁽¹⁾; *Hemangini Dasi v. Kedarnath Kundu Chowdhry*⁽²⁾; *Narbada-bai v. Mahadeo Narayan*⁽³⁾, *Savitribai v. Luximibai*⁽⁴⁾; *Mahableshtar Krishnappa v. Ramchandra Mangesh*⁽⁵⁾. Mayne's Hindu Law, 8th edition, para. 451: compare section 39 of the Transfer of Property Act, 1882.

P. B. Shingne for the respondent:—The suit did not fall under section 16 of the Civil Procedure Code, 1908. A suit for maintenance is not a suit for immoveable property. A claim for maintenance is not a charge upon land unless expressly made so by a deed or decree: see *Beer Chunder Manikkya v. Raj Coomar Nobodeep Chunder Deb Burmono*⁽⁶⁾; *Adhiranee Narain Coomary v. Shona Malee Pat Mahadai*⁽⁷⁾; *Sham Lal v. Banna*⁽⁸⁾; *Ram Kunwar v. Ram Dai*⁽⁹⁾; *The Bhartpur State v. Gopal Dei*⁽¹⁰⁾. At the time of the suit there was no charge on immoveable property. It is immaterial if the order of Court would create a charge

At any rate defendant 2 was wrongly impleaded in the suit

(1) (1909) 33 Mad. 131

(6) (1883) 9 Cal. 535 at p. 555.

(2) (1889) 16 Cal. 758 at p. 764.

(7) (1876) 1 Cal. 365.

(3) (1880) 5 Bom. 99.

(8) (1882) 4 All. 296

(4) (1878) 2 Bom. 573.

(9) (1900) 22 All. 326.

(5) (1913) 38 Bom. 94 at p. 100.

(10) (1901) 24 All. 160.

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SCOTT, C. J. :—The question is whether this suit can rightly be held to fall within the scope of section 16 (d) of the Civil Procedure Code. The learned Judge has held that it does not. The suit is one by the mother of the deceased husband of the 1st defendant against that defendant and her father. Both the defendants live in a Native State, and therefore in respect of personal claims they will not be liable to the jurisdiction of the Court unless the suit falls within section 16. The suit is for a declaration that the plaintiff is entitled to a maintenance allowance of a certain amount for her life against the 1st defendant and for residence and pilgrimage expenses and other claims, and also for stridhan property, and one of the objects of the suit, which is set out in the prayer, is that the liability to pay the sums claimed should be made a charge on the 1st defendant's land in the Inam village in the Bhimthadi Taluka of the Poona District and on her share also in the said village. The 1st defendant is sued as the person to whom the family estate has come upon death of her husband whose mother is the plaintiff Sitabai. On the plaint as framed, the question which has to be decided before the Court will be enabled to pass a decree is whether or not the plaintiff is entitled to a right to, or interest in, immovable property in the Bhimthadi Taluka by way of charge as security for the maintenance which may be decreed. That being the question to be determined, it is a question directly within the terms of section 16 (d) of the Civil Procedure Code. We, therefore, think that the learned Judge was in error. We must set aside his order and direct that the suit do proceed against the 1st defendant, but we think that the Court had no jurisdiction against the second defendant. Costs, costs in the cause.

* *Order set aside.*

J. G. B.