

**Vishnu Ramchandra Vs. Ramchandra Yeshwant**

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**Court :** Mumbai

**Decided On :** Jul-09-1907

**Reported in :** (1907)9BOMLR936

**Judge :** Louis P. Russell, Acting C.J. and ;Heaton, J.

**Appeal No. :** Civil Extraordinary Application No. 102 of 1907

**Appellant :** Vishnu Ramchandra

**Respondent :** Ramchandra Yeshwant

**Judgement :**

Louis P. Russell, Acting C.J.

1. This is an application by the decree-holder under Section 622 of the Code for this Court to exercise the jurisdiction conferred thereby.
2. The decree-holder got his decree and was resisted, he says, by a person other the judgment-debtor and accordingly an application was made to the Subordinate Judge under Section 331. He, however was mated to go in to the question.
3. The point that now arises before us is whether an appeal lies from that order or not for, if an appeal lies, then I apprehend this application under Section 622 would be incorrect.

4. Now in two cases viz. *Fonindro Deb Raikut v. Rani Jugodishwari Dabi* ILR (1886) Cal. 235 which was followed in *Gopal v. Fernandas* ILR (1802) Mad. 127 it was held that an appeal would lie from an order under Section 331 and the reason for the decision in both those cases is that the claim under Section 331 must be treated for all purposes as if it were a plaint; and inasmuch as by Section 2 of the Civil Procedure Code the rejection of a plaint is a decree, therefore, an appeal lies from the rejection of a plaint under Section 331.

5. But having considered those two cases it appears to me that the first thing to notice is that in neither case is the wording of Section 331 referred to in detail; and no doubt there are certain points that arise upon that section as also Sections 328 and 329 of the Code, because we find in Section 328 the words used are that 'the decree holder may complain to the Court of obstruction to his decree'. In Section 329 again the words are 'The Court shall inquire into the matter of the complaint and pass such order as it think fit.' So in those two sections as also in Section 330 the words are 'complain' and 'complainant.'

6. But when you look at Section 331, the word used is not 'complain' but 'claim' and that section provides that 'if the resistance or obstruction has been occasioned by any person other than the judgment-debtor, the claim shall be numbered and registered as a suit between the decree-holder as plaintiff and the claimant as defendant.'

7. From those sections it would appear as if the complaint may be oral, but the claim should be in writing.

8. Now stopping at those words alone it certainly does not appear to me that the claim when numbered and registered is to be treated as for all purposes the same as a plaint for the obvious reason that if it had been so intended one would have imagined the legislature would have used the words 'the claim shall be numbered and registered in the form of a plaint as a suit etc.' See Section 410 of the Civil Procedure Code. But it does not say so. That is one objection to the argument of Mr. Anant Desai on the section itself.

9. Then the section goes on ' and the Court shall, proceed to investigate the claim in the same manner and with the like power as if a suit for the property had been instituted by the decree-holder against the claimant under the provisions of Chapter V'. Then again had it been intended to put this claim for all purposes on the same footing as a plaint, it is somewhat strange to see that it was not so definitely expressed.

10. Again, supposing, that the argument of Mr. Desai is correct, there is no provision whatever for the signature of the claim by the claimant or for any other of the form which are directed by Chapter V as applicable to plaint.

11. Then the next clause of the section which one has to deal with is; 'and shall pass such order as it thinks fit for executing or staying execution of the decree.' Now surely if for all purposes this claim was to be treated as a plaint, those words would have been, 'and shall pass such decretal order as may give the claimant the relief he demands or claims.' Instead of that you find that the relief that is to be given upon this claim is to be limited to an order for executing or staying the execution of the decree.

12. Then the next clause of the section says 'every such order shall have the same force as a decree.' It does not say 'every such order shall be a decree' as one would have expected; and if the argument had been well founded I can see no reason why in Section 2 after the words 'every order rejecting a plaint' you should not also have the words 'every order rejecting application, under Section 331 is within the definition of decree in that section.'

13. Lastly, I think, we must have regard to another circumstance which differentiates the present proceeding under Section 331 from those in an ordinary suit and that is this. From the nature of things this is a purely interlocutory application during the proceeding of an execution under a decree and I confess I have the greatest possible difficulty in saying that such a proceeding should be or can be put for all purposes upon the same footing as a plaint in a suit.

14. I, therefore, am of opinion that we have power to deal with this case under Section 622 and that the order of the Subordinate Judge should be set aside and

the case remanded to him to be dealt with by him according to law.

15. Rule made absolute with costs.

**Heaton, J.**

16. In this case a decree-holder made a complaint under Section 328, of the Civil Procedure Code, to the Judge, who, holding that the matter came under Section 331, without registering the claim as a suit and without making any inquiry, rejected the complaint.

17. I am unable to see that this order rejecting the complaint was an order made under Section 331 of the Code of Civil Procedure, because it was made without following the provisions of that section in any particular; nor am I able to find any section in the Code to which the order can properly be ascribed.

18. But it is contended that the order is open to appeal.

19. That certainly is not so under Section 588 of the Code. So that if it be open to appeal at all it must be by virtue of Section 540 and that section deals only with appeals from decrees.

20. The question that arises then is, whether this order rejecting the complaint is a 'decree'.

21. We have a definition of that word in Section 2 of the Civil Procedure Code and where a word is defined we have no power to extend its meaning beyond that which appears in the definition.

22. Now the definition of 'decree' begins thus 'it means the formal expression of an adjudication upon any right claimed or defence set up in a Civil Court when such adjudication, so far as regards the Court expressing it, decides the suit or appeal.'

23. It is not and cannot be contended that the order in question comes under that part of the definition. There is no other part which expressly covers either an order which it is impossible to ascribe to any section in the Code as is the case here; or

to an order rejecting a complaint made under Section 328. The definition does say that an order rejecting a plaint is a decree and that is the basis of the two decisions, one of the High Court of Calcutta and the other of the High Court of Madras, to which the learned Acting Chief Justice has referred. Like him I am, unhappily, unable to follow the reasoning of those decisions.

24. An order rejecting a complaint made under Section 328 is neither an order rejecting a plaint nor an order refusing to register a plaint. To extend the meaning of a precise definition, by analogy, is not to interpret the written law but to rewrite it.

25. For these reasons I concur with the order proposed.

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