

(1909) 09 BOM CK 0004
In the Bombay High Court

Ganesh Narayan Sathe

APPELLANT

Vs

Purshottam Gangadhar Karve

RESPONDENT

Date of Decision : 23-09-1909

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : 4 Ind. Cas. 595

Hon'ble Judges : Basil Scott, C.J;Batchelor, J

Bench : Division Bench

Judgement

1. In this case the opponent obtained a decree declaring that an attachment upon certain money effected through the Small Cause Court was invalid and decreeing that the defendant should repay the same to the plaintiff. That was a decree which was confirmed by the High Court and would in ordinary course be executed by the First Class Subordinate Judge in whose Court, the suit was filed. Instead, however, of proceeding to execute in that Court the opponent proceeded to the Small Cause Court which prior to the filing of the suit in the First Class Subordinate Judge's Court had finished with the litigation so far as it was concerned. Notwithstanding the fact that the opponent was entitled to execute the decree obtained by him, the Judge of the Small Cause Court, purporting to act u/s 151 of the present Civil Procedure Code, directed the applicant who was the defendant in the First Class Subordinate Judge's Court to refund the money obtained by him in execution from the Small Cause Court. Such an order could only be made if it was necessary for the ends of justice or to prevent the abuse of the process of the Court. We do not think that it can be said to have been necessary for either purpose because the opponent had already a decree which he was entitled to execute in the First Class Subordinate Judge's Court. We, therefore, set aside the order with costs.