

1878.
January 14.

VENKATASAM
NAIK
v.
KUPPAIYAN.

O.S. No. 472 of 1866 shows that the debt was the 1st defendant's personal debt, and the decree was against him personally. Under this decree, only his rights and interests in the property could be sold, and nothing beyond his rights would pass to the purchaser. The recent decision of the Privy Council in *Dindiyal Lal v. Jagdip Narain Singh* (1), delivered on the 25th July 1877, contains the following passage, "whatever may have been the nature of the debt, the appellant cannot be taken to have acquired by the execution sale more than the right, title and interest of the judgment-debtor. If he had sought to go further, and to enforce his debt against the whole property, and the co-sharers therein who were not parties to the bond, he ought to have framed his suit accordingly, and have made those co-sharers parties to it. By the proceedings which he took he could not get more than what was seized and sold in execution, viz., the right, title and interest of the father." Here the debt was a personal debt and, further, had it been otherwise, the suit was not framed to enforce the debt against the whole property. The judgment of the Lower Appellate Court will be reversed with costs.

Appeal allowed.

APPELLATE CIVIL.

Before Sir W. Morgan, C. J., and Mr. Justice Innes.

1878.
January 18.

KAMALAM (PLAINTIFF) APPELLANT v. SADAGOPA SÁMI
(1ST DEFENDANT) RESPONDENT (2).

Dancing girl, suit by—Mírásí right.

The suit was brought by a dancing girl to establish her right to the mírásí of dancing girls in a certain pagoda, and to be put in possession of the said mírásí with the honors and perquisites attached thereto as set forth in schedules to the plaint annexed. The defendants denied the claim. The District Munsif, finding that the claim had been established, decreed for plaintiff, but, on appeal by the 1st defendant, the District Judge dismissed the suit on the authority of *Chinna Unmayi v. Teagarai Chetti* (3). On second appeal, *Held*, that the present case was distinguishable from that of *Chinna Unmayi v. Teagarai Chetti* (3), in that there was no allegation in that case of any endowments attached to the

(1) I.L.R., 3 Cal., 198.

(2) Second Appeal No. 600 of 1877, against the decree of J. Hope, Acting District Judge of Chingleput, dated 18th July 1877, reversing the decree of the District Munsif of Trivellár, dated 22nd January 1876.

(3) I.L.R., 1 Mad., 168.

office. That in this case the question of the existence of a hereditary office with endowments or emoluments attached to it ought to be inquired into, as that would materially affect the question of whether plaintiff had sustained injury by the interference of the 1st defendant.

1878.
January 18.

KAMALAM
v.
SADAGOPA
SAMI.

THE plaintiff sued in O. S. No. 656 of 1875, on the file of the District Munsif's Court at Trivellúr, to establish her right to the mirásí of dancing girls in the pagoda of Srí Virarágavasámi at Trivellúr, and to be put in possession of the said mirásí, together with the honors and perquisites attached thereto, as set forth in the Schedules A and B filed with the plaint, and to recover Rupees 24, being the value of said perquisites and honors due for the year preceding October 1875. She alleged that the 1st defendant, the Dharmakarta of the pagoda, and the 2nd and 3rd defendants, his agents, wrongfully dismissed her from the office, because she had refused to acquiesce in the admission by the 1st defendant of new dancing girls into the pagoda service, of which she claimed the monopoly for herself and the then existing families of dancing girls.

The 1st defendant, admitting that the plaintiff, within his knowledge, held the office of dancing woman for 22 years, denied that she had any mirásí to the office in question, and asserted that, as dharmakarta, he was fully competent to appoint and dismiss pagoda servants at his pleasure; that in the exercise of these rights he admitted two dancing women to the service of the pagoda in 1869; that such admission in no way interfered with plaintiff's rights, if any such existed; that the honors claimed in the plaint had an exorbitant money value attached to them and were not enforceable in law, and that no money was ever paid out of the pagoda funds to the dancing women. The District Munsif, finding that the plaintiff had established her claim, passed a decree in her favor as against the 1st defendant, at the same time exonerating the 2nd and 3rd defendants from all responsibility.

Against this decree the 1st defendant appealed.

The Acting District Judge reversed the decree of the First Court and dismissed the suit on the authority of *Chinna Ummayi v. Teagarai Chetti* (1).

The plaintiff preferred a second appeal against this decree on the grounds, among others, that the Lower Appellate Court

1878.
January 18.

KANALAM
v.
SADAGOPA
SAMI.

misconstrued the nature of the suit, and that the decision cited was clearly distinguishable from the present case.

Ananthachari and *Kámésan* for the second Appellant.

Mr. O'Sullivan (*Advocate-General*) and C. Rámachandra Ráy Sáib for the second Respondent.

The Court, Sir W. MORGAN, C.J., and INNES, J., delivered the following

JUDGMENT:—The case is distinguishable from that of *Chinna Ummayi v. Teagarai Chetti* (1), in that there was no allegation in that case of any endowment attached to the office. Here it would seem from the plaint schedule various honors, and more or less valuable sources of income are alleged to be appurtenant to the hereditary office. We think the question of the existence of such an hereditary office with endowments or emoluments attached to it ought to be inquired into, as that would materially affect the question of whether plaintiff has sustained injury by the interference of the defendant.

We must reverse the decree of the Lower Appellate Court and remand the suit for re-investigation on this point.

Suit remanded.

FULL BENCH.

Before Sir W. Morgan, C.J., Mr. Justice Innes, and Mr. Justice Kindersley.

1878.
April 18.

VENKATARÁMÁYYAN AND TWO OTHERS BY THEIR NEXT FRIEND AND GUARDIAN SITHALAKSHMI AMMÁL, APPELLANTS (PLAINTIFFS) v. VENKATASUBRAMÁNIA DI'KSHATAR AND TWO OTHERS, RESPONDENTS (DEFENDANTS) (2).

Decree—Attachment—Execution—Sale of minors' shares.

Appeals from the decrees of the District Court of Coimbatore in O. S. Nos. 13 and 17 of 1876, dismissing the suits.

The plaintiffs, minors, by their mother, as next friend and guardian, sued defendants, sons of one S. D., under Section 230 of Act VIII of 1859 to recover a 1/4th share of a house and lands of which plaintiffs were dispossessed by the defendants in the execution of the decree in a suit, No. 33 of 1872. The facts were that in a suit, No. 28 of 1871, a decree for money due under a mortgage bond was passed against

(1) I.L.R., 1 Mad., 168.

(2) Regular Appeals Nos. 48 and 49 of 1877, against the decrees of F. M. Kindersley, District Judge of Coimbatore, dated 24th January and 15th February 1877, respectively.