

Section 582, to perform as nearly as may the same duties as are imposed on Courts of First Instance, the Lower Appellate Court was, in our opinion, fully justified in making the orders relating to the reference under the provisions of the Code.

The petitioners consented that a decision should be given by the majority of two arbitrators and an umpire.

This application is dismissed with costs.

**NOTES.**

[See (1885) 12 Cal. 173 ; (1891) 18 Cal. 507; (1888) 13 Bom. 119 for the recognition of the powers of an Appellate Court to refer the matter in dispute to arbitration at the instance of parties under Sec. 582 of C. P. C. of (1882) corresponding to Sec. 107 (2) and Or. 22, R. 11 of V of 1908.]

[3 Mad. 79.]

**APPELLATE CIVIL.**

*The 11th October, 1880.*

PRESENT:

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE  
MUTTUSAMI AYYAR.

Ponnampilath Parapravan Kuthath Haji.....(Petitioner) Appellant  
*versus*

Ponnampilath Parapravan Bavotti Haji.....(Counter-Petitioner)  
Respondent.\*

*Civil Procedure Code, Section 231* †—*Application to keep decree in force—Limitation Act, Section 179—Joint decree-holders.*

Although the Civil Procedure Code does not allow one of several decree-holders to apply for the partial execution of a joint decree, yet an application by one of such decree-holders for execution of the decree in respect of so much of the relief granted to all as he considers appertains to him individually, may keep in force the decree as being an application according to law.

THIS was an application by a judgment-debtor for the refund of Rupees 697-10-0, recovered by the decree-holder *Bavotti Haji* in execution of a joint decree obtained by him and three other persons.

The amount was recovered by process of execution issued in April and July 1878. On 4th February 1879 three years had [80] elapsed since the last application to execute the *whole* decree. The Subordinate Judge held that the judgment-debtor was entitled to have the amount refunded on the ground that

C. M. S. A. 24 of 1880 from the order of J. W. Reid, District Judge of North Malabar, reversing the order of the Subordinate Judge, dated 22nd November 1879.

† [Sec. 231 :—If a decree has been passed jointly in favour of more persons than one, any one or more of such persons, or his or their representatives, may apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the representative in interest of the deceased.

If the Court sees sufficient cause for allowing the decree to be executed [on an application so made, it shall pass such order as it deems necessary for protecting the interests of the persons who have not joined in the application.]

intermediate applications by one of two or more decree-holders, praying for partial execution of the decree and not for the execution of the whole decree, are not applications having the effect of keeping the decree alive; and that the fact that the payments were made under compulsion or process of Courts was no bar to the judgment-debtor's claim.

On appeal the District Judge, after discussing the authorities quoted on behalf of the appellant and respondent, proceeded as follows: "It seems to me, however, that to make an application to execute an aliquot share in a joint decree an illegal proceeding, especially when sanctioned by a Court, is a very hard proceeding. It might be argued, I think, on general principles that by never allowing a joint decree-holder to take out execution for so much of the decree as he feels himself entitled to, he might be placed in a position when he could not execute his decree. Suppose the Court which has the discretion, refuse his application to execute the whole decree, even though it has full power to protect the other joint decree-holders, and suppose the disappointed applicant could not get the other joint decree-holders to join him in execution, he would be practically without power to execute, and the maxim *ubi jus ibi remedium* would be outraged. It may be said he might appeal, but suppose a Small Cause Court had to work Section 231, there would be no appeal. It is impossible to believe the Legislature intended such a possibility. I still hold that the Section 231, by its words 'any one or more of such persons *may* apply for the execution of the whole decree,' did not render it *obligatory* on applicant, but only *permissive*. The cases quoted above, if they had moved the Legislature, would, I think, have made them make it obligatory to apply for execution of the whole decree; the words would have been '*shall* apply,' not '*may* apply,' and the Court would not then have been granted the discretion to refuse the application. I therefore hold the applications prior to April 1878 were good and according to law."

The defendant appealed.

Mr. *Shepherd* for the Appellant.

The Respondent did not appear.

[81] The Court (TURNER, C.J., and MUTTUSAMI AYYAR, J.) delivered the following

**Judgment:**—We cannot agree with the Judge that the Code allows one of several decree-holders to apply for the partial execution of a joint decree, Strictly speaking, all decree-holders should apply for the execution of such a decree, but the law also permits one of several decree-holders to apply for the execution of the decree, but only of the *whole* decree. Where, however, one of several such decree-holders has applied for the execution of the decree in respect of so much of the relief granted to all as he considers appertains to him individually, we are not prepared to say that such an application would not keep alive the right to execute the decree. Where an application for the execution of a decree has been made to a proper Court and by proper person, on considering the application with the decree, the Court will determine whether or not it should grant the order prayed for. It may refuse the order sought on the ground that it is not warranted by the terms of the decree. Such an application would nevertheless be an application according to law and would keep in force the decree.

We shall affirm the order of the Judge and dismiss the appeal.

NOTE:—See I. L. R., 4 Cal., 605.  
I. L. R., 1 All. 510.

**NOTES.**

**[EXECUTION OF JOINT DECREE BY ONE ONLY OF THE DECREE-HOLDERS—**

This is prohibited and as such when an application was made by two only out of thirteen defendants who were given costs in a suit, without joining all the rest, it was held that such an application was held not maintainable:—(1894) 18 Mad. 464. See also (1901) 25 Mad. (431).]

[3 Mad. 81.]

APPELLATE CIVIL.

The 27th October, 1880.

PRESENT :

MR. JUSTICE KERNAN AND MR. JUSTICE MUTTUSAMI AYYAR.

Govinda Nair.....(Petitioner)

versus

Kesava.....(Counter-Petitioner).\*

*Execution of decree—Obstruction by stranger—Civil Procedure Code, Secs. 329—331.*

The power given by Section 329† of the Civil Procedure Code to make such order as the Court shall see fit must be construed with regard to the circumstances in respect of which the power is to be exercised.

An order under Section 329 should be the result of the fact that the defendant in the suit, who is precluded by the decree from disputing plaintiff's right, unjustly instigates a third party, who has no real interest in the property, to prevent the plaintiff from getting the benefit of his execution.

[32] A Court has no power under this section to determine, as between the judgment-creditor and a third party obstructing the execution of the decree, important questions on the merits which are wholly unconnected with, and cannot be affected by, the fact that the obstruction is made at the instigation of the defendant.

THIS was a petition under Section 622 of the *Civil Procedure Code*.

A. Ramachandrayyar for the Petitioner.

The Counter-Petitioner did not appear.

The facts and argument appear sufficiently in the following judgment of the Court (KERNAN and MUTTUSAMI AYYAR, JJ.)

**Judgment:**—Petitioner obtained, as plaintiff in Suit No. 770 of 1877 in the Munsif's Court, a decree for the delivery to him of possession of certain lands specified in the decree.

A warrant for the delivery of the lands in pursuance of the decree was given to the Amin. The Amin was obstructed in the execution of the decree as regards plot C by the younger brother, *Kesava*, of the first defendant, who is not a party to Suit No. 770 of 1877.

\* C. M. P. No. 430 of 1879 against the order of the District Munsif of Angadipuram on M. P. 700 of 1879, dated 19th August 1879.

Procedure in case of obstruction by judgment-debtor or at his instigation. † [Sec. 329 :—If the Court is satisfied that the obstruction or resistance was occasioned by the judgment-debtor or by some person at his instigation, the Court shall inquire into the matter of the complaint, and pass such order as it thinks fit.]