

[4 Mad. 324]

APPELLATE CIVIL.

The 25th November, 1881.

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE
KINDERSLEY.

Subramanian Pattar and another.....(Plaintiffs), Appellants
and
Panjamma Kunjamma and others.....(Defendants), Respondents.*

Execution of decree improperly obtained through error in procedure.

It is not competent to a Court executing a decree to refuse execution in a case where no fraud is suggested on the ground that the plaintiffs were allowed improperly to institute the suit.

AN application for execution of the decree in Original Suit 28 of 1877 on the file of the Subordinate Judge of Malabar having been made, the Court refused the application on the ground that the plaintiffs on the record were merely agents or [325] rent-collectors of a devasam belonging to the Maharaja of Cochin without authority to represent the real owner in the suit.

It was not alleged that the real owner objected to plaintiffs' application on his behalf.

The plaintiffs appealed to the High Court.

Mr. *Shephard* and *Ramachandrayyar* for Appellants.

The Advocate-General (Hon. *P. O' Sullivan*) and *Bhashyam Ayyangar* for Respondents.

The Court (TURNER, C.J., and KINDERSLEY, J.) delivered the following

Judgment :—We are of opinion the Subordinate Judge should have proceeded to execute the decree, and that it was not competent to him to refuse execution on the ground that the plaintiffs had been allowed improperly to maintain suit.

If the Court executing a decree should discover that the decree had been obtained by a fraud, it would of course be competent to it to stay proceedings to enable the party aggrieved to apply for review, or, if he were not a party to the suit, to take other proceedings to set aside the decree. Here no fraud was suggested but a mere irregularity of procedure, and the parties had suffered the decree to pass and remain subsisting for some time before the application was made for execution.

The order staying proceedings is set aside, and the respondents will pay the appellant's costs.

NOTES.

[As to whether execution should be refused in the case of *fraud*, see (1890) 15 Bom. 216 at 219 ; 15 Bom. 307.]

* C. M. A. No. 440 of 1881 against the order of C. Ramachandrayyar, Subordinate Judge of South Malabar, dated 31st January 1881.