On the 23rd August 1879, the petitioner again applied for execution, not against the property declared to have been fraudulently alienated, but against the house in the possession of the widow.

[294] If the petitioner was prevented from executing his decree, the prevention was caused by the heirs of the original judgment debtor, who, within the meaning of the section, may be said to be the judgment-debtor. Then was petitioner prevented from executing his decree by reason of the petitioner's alienations?

It appears to us that he was. The Suit 211 of 1877 would not have been instituted had it been possible for the decree-holder without instituting it to obtain execution against the properties comprised in that suit.

The obstacle to execution lay in the antecedent fraud which had operated to create a fictitious transfer of the property from the judgment-debtor. It may be said that there was the house in possession of the widow against which execution could have been had, and which the District Munsif in his decree indicated as the property against which execution should first be taken out. But there is nothing to show that this house is sufficient to satisfy the decree. The decree-holder, as the result of Suit 211 showed, had a right to execute against all the properties comprised in it, and if he was obstructed, as the institution of Suit 211 shows he must have been, in obtaining execution against those properties, he was prevented within the meaning of the section. We think, therefore, that the decree-holder is not barred in respect of the present application. The question is not affected by the fact of the application being made in respect of property other than that comprised in the Suit 211 of 1877. We therefore dismiss the appeal with costs.

NOTES.

[It is not necessary to show that the fraud continued so as to prevent execution at any time :—(1899) 22 Mad., 320.

Locking up house so as to prevent moveables being attached is fraud :—(1899) 22 Mad., 320. *See* also (1906) 11 C. W. N., 440 ; (1883) 6 Mad., 365 ; (1885) 9 Bom., 318.]

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[295] APPELLATE CIVIL.

The 3rd October, 1879.

PRESENT :

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

Sultan Ackeni Sahib and others.....(Petitioners), Appellants

and

Shaik Bava Malimiyar.....Respondent.*

Religious Endowment Act, Section 5—Appeal.

An appeal lies under Section 647 of the Code of Civil Procedure against an order of a District Court under Section 5, Act XX of 1863.

THE Trustees of the Nagur Durga having been removed from their office for malfeasance by the decree of the District Court of South Tanjore in Suit 2

* C. M. A. No. 150 of 1879 against the order of W. H. Glenny, Acting District Judge of North Tanjore, dated 24th March 1879.

of 1877 (*see* I. L. R., 2 Mad., 197) six petitions were presented to the District Court praying for the appointment of various persons as trustees in their stead.

The District Judge selected the respondent from among the nominees and appointed him as sole trustee.

The appellants, who had presented a petition for the appointment of their nominess, appealed to the High Court against the order of the District Judge.

A preliminary objection was taken for the respondent that no appeal lay from the order of the District Court.

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

Mr. *Lascelles* for the Respondent.

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

Judgment:—The first question raised at the hearing is whether or not this Court is competent to entertain an appeal from an order made by the District Court under Section 5, Act XX of 1863.

[296] It is true the Act makes no provision for an appeal, but the general law regulating the procedure in Civil Courts is to be sought in the Civil Procedure Code. That Code, Section 647, declares that the procedure therein prescribed shall be followed, as far as it can be, in all proceedings in Courts of civil jurisdiction other than suits and appeals. The order passed by the Judge is passed in a proceeding other than a suit or appeal and is analogous to the decree in a suit. By analogy, in our judgment, it must be held that an appeal lies from the order as it would lie from a decree in a suit. We shall, therefore, proceed to deal with the appeal on the merits.

(The Court then set aside the order of the District Judge and directed him to pass orders *de novo*, appointing as co-trustees three competent persons.)

NOTES.

[This case is deemed to have been in effect **overruled** by **(1887) 11 Mad., 26**:—(1900) 24 Mad., 95; (1896) 19 Mad., 285. *See* also (1886) 10 Mad., 98; (1888) 11 Mad., 319.]