

[4 Mad. 285.]

APPELLATE CIVIL.

The 22nd July, 1881.

PRESENT :

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

Rahiman Khan Samoji Sahib.....Appellant
versus
Patcha Miyah..... Respondent.*

Execution of decree—Questions to be decided in, and not by separate suit.

Where a decree directed certain land to be taken from first defendant and put into plaintiff's possession for a term, and a claim was put in by second defendant's assignees to part of the land :

Held that an objection by first defendant to the claim was a matter to be determined in execution proceedings and not by separate suit.

IN Suit 7 of 1877 in the District Court of Trichinopoly the decree directed that certain land be taken out of the possession of the first defendant and delivered to the plaintiff for usufructuary possession for a term.

The transferees of the second defendant in the suit (by whose intervention certain land was excluded from the decree) put in a claim to certain land delivered to the plaintiff under the decree.

Upon this the first defendant presented this petition complaining that the plaintiff and second defendant were colluding together to defraud him, alleging that the second defendant never had any title to the land in dispute, and that the plaintiff did not object to the claim of the second defendant.

The District Judge passed the following order :—

" It is not true that the plaintiff and second defendant are acting together. The first defendant has no *locus standi* in these proceedings at all. The question is solely between plaintiff and a third party alone.

[286] The village of Velayudamgudi as excluded from the decree, and the only question is whether lands belonging to Velayudamgudi have been returned to plaintiff or not. I refuse to let the first defendant into these proceedings. His rights can be in no way affected thereby."

The first defendant appealed to the High Court.

Visvanathayyar for appellant.

Palman for respondent.

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

Judgment :—All questions between the parties to the suit or their representatives and relating to the execution of decree must be determined by the Court executing the decree, and not by separate suit.

* C. M. A. 191 of 1881 against the order of F. Brandt, District Judge of Trichinopoly, dated 24th November 1880.

In execution of the decree, it is alleged by the objectors, who are the wives and transferees of the second defendant, that a portion of the property, which, by the intervention of the second defendant, was excluded from the decree, has, in execution of the decree, been taken out of their possession. The decree-holder is not greatly interested to resist their claim, but the first defendant who, is the person principally interested, although he is not entitled to present possession, desires to contest it.

If there had been no transfer to the objectors and the title of the second defendant had been preserved, it is clear that the first defendant was not only entitled to dispute the claim in the execution department, but that, if he omitted to adopt that course, he could not have obtained relief by separate suit.

The objectors, as transferees, or representatives in interest of the second defendant, and, as between them and any party to the suit, the question—whether the land belongs to the village of the objectors or to the village which the decree directs must be taken out of the possession of the first defendant and delivered to the plaintiff for usufructuary possession—must be heard and determined by the Court executing the decree.

The order of the Judge should be set aside, and he should be directed to try the matter in dispute. The costs of this appeal will abide and follow the result.

NOTES.

[This decision was approved in (1883) 7 Mad. 255; (1888) 15 Cal. 437. See also 19 Cal. 683 at 689 P.C.]

[287] APPELLATE CIVIL.

The 2nd August and 6th October, 1881.

PRESENT:

MR. JUSTICE INNES AND MR. JUSTICE MUTTUSAMI AYYAR.

Mupanagari Narayanan Nayar.....(First Defendant),	} Appellant	} S. A. 642.*
and		
Virupatchan Nambudripad.....(Plaintiff), Respondent.		
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Puvangara Narayanan Nayar.....(First Defendant),	} Appellant	} S. A. 643.*
and		
Virupatchan Nambudripad.....(Plaintiff), Respondent.		

Malabar Law—Tenants' right to improvements prior to demise sued on—presumption Usage.

There is no universal usage in Malabar nor any presumption that a tenant is not entitled to compensation for improvements effected prior to the date of the kanom under which he holds and not specially reserved to him by the kanom deed.

* Second Appeal Nos. 642 and 643 of 1880 against the decrees of H. Wigram, Officiating District Judge of South Malabar, modifying the decrees of N. Sarvothama Rau, District Munsif of Nedunganad, dated 28th June 1880 (reported by order of the Court).