

[219] APPELLATE CIVIL.

The 1st March, 4th October, 1881.

PRESENT :

MR. JUSTICE INNES AND MR. JUSTICE KERNAN.

Sri Krishna Tata Chariar.....Appellant
and
Singara Chariar and another.....Respondents.*

Decree—Execution—Recurring right—Remedy.

A decree declaring a party entitled to a constantly recurring right to receive certain payments in kind, valued at a certain annual sum, cannot be executed according to the provisions of the Code of Civil Procedure.

IN Suit 120 of 1852 in the Court of the Principal Sadr Amin, Chingleput, it was decreed, *inter alia*, that the sacred rice allowed daily and on important occasions in the pagoda of Sri Devaraja Swamiar at Conjeeveram to the Sannadi (small temple) of Manavala Mahamuni, as mentioned in the plaint, be from time to time given to the respondents.

In 1880 the respondents applied to the District Munsif's Court at Tiruvalur for execution of this decree.

A sum of money, as the equivalent, up to October 1875, had been claimed and allowed by an order of the Munsif's Court, dated 20th March 1876.

The respondents now claimed a sum of Rs. 81-0-6 due up to October 1878.

The appellant alone of the representatives of the original defendants resisted the application.

The Munsif directed payment of three-fourths of the amount claimed, and this order was confirmed on appeal by the District Judge.

The first objection taken in second appeal against the order of the Munsif was that the decree was not capable of execution, and that the respondents' proper remedy was by regular suit.

Bhashyam Ayyangar and *Gopalachariar* for Appellant.

Hon. *T. Rama Rau* and *Sadagopachariar* for Respondents.

The Court (INNES, and KERNAN, JJ.) delivered the following

[220] Judgment:—The appellant does not contest the accuracy of the District Judge's report that the parties are representatives respectively of the original plaintiffs and defendants.

What is contended for is that the decree is not susceptible of execution as to amounts of rice as money declared to accrue due from time to time at periods subsequent to the decree.

We are of opinion that the contention is sound. The decree is too indefinite to admit of execution in the manner contemplated by the Code. In every instance of application for execution the decree-holders would be in this difficulty—that they would not be able to state definitely, as required by the

* C.M.S.A. No. 656 of 1880 against the order of A. L. Lister, Acting District Judge of Chingleput, confirming the order of V. Sundara Ramayya, District Munsif of Tiruvalur, dated 18th August 1880.

Code, to what extent relief was desired. What was intended by the decree was to declare in favour of the decree-holder a constantly-recurring right which would give rise to an action for damages on the violation of it by the judgment-debtors.

We shall reverse the orders of the Courts below and dismiss the application with costs.

NOTES.

[See (1888) 12 Bom. 416 where a similar decision was given.]

[4 Mad. 220.]

APPELLATE CIVIL.

The 14th October, 1881.

PRESENT :

MR. JUSTICE KINDERSLEY AND MR. JUSTICE MUTTUSAMI AYYAR.

Muttammal.....(Plaintiff Appellant

AND

Chinnana Gounden.....(Defendant) Respondent.*

Procedure under Section 229 of Act VIII of 1859—Change of jurisdiction between date of original suit and of claim, effect of—Jurisdiction to hear appeal—Law in force at date of appeal governs.

The subject-matter of an appeal should be valued for the purpose of jurisdiction according to the law in force at the date of the appeal and not of the suit which has led to it.

For the purpose of jurisdiction, a claim under Section 229 of Act VIII of 1859 is a fresh suit and not a continuation of the suit in which the claim is made, so that, where by reason of a change in the law as to the mode of valuing suits for the purpose of jurisdiction between the date of the original suit and the claim the Court that dealt with the original suit ceases to have jurisdiction over the subject to matter of the claim, that Court cannot try the claim.

THE plaintiff in this case (O. S. 393 of 1876) sued her husband's brother, Rangasami Nayak in O. S. 65 of 1873 in the Court of [221] the District Munsif of Salem to recover one-eighth of the Mitta of Karukalvadi, and obtained a decree against him. In attempting to execute this decree the plaintiff was resisted by the defendant (in this case) who claimed to be in possession of the lands as purchaser thereof at a Court sale in O. S. 16 of 1872 in the District Court of Salem.

The defendant's objection was disallowed by the Munsif and, on appeal, by the District Judge, but the High Court in April 1876 reversed their decision, and this suit was registered in October 1876 in pursuance of the directions of the High Court under Section 229 of the Code of Civil Procedure (Act VIII of 1859).

The Munsif gave judgment in favour of the defendant and the plaintiff appealed to the High Court.

* Appeal No. 37 of 1880 against the decree of A. Chendriah, District Munsif of Salem, dated 13th August 1877.