QUEEN-EMPRESS v. VIRANNA.

JUDGMENT :—It has been many times ruled by this Court that a Magistrate, to whom proceedings are submitted under s. 349 of the Code of Criminal Procedure, is not at liberty to return the case to the submitting Magistrate, but must dispose of it himself. He has the power to commit to sessions if necessary.

Very serious inconvenience is the result of the Magistrate's order returning the prisoner and directing committal to sessions.

We think that we may allow the committal to the sessions to stand.

We desire, however, that in all cases referred under s. 349, the Magistrate, to whom reference is made, shall himself dispose of the case and shall not return it and the prisoner to the Magistrate by whom the reference is made.

APPELLATE CIVIL—FULL BENCH.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, Mr. Justice Kernan, Mr. Justice Muttusámi Ayyar, Mr. Justice Brandt, and Mr. Justice Parker.

1886. March 9. April 21.

KALANDAN (PETITIONER) and PAKRICHI (RESPONDENT).*

THAMMAYYA (PLAINTIFF) and VENKANNA (DEFENDANT).†

Regulation IV of 1816, s. 30—Personal property only liable to attachment in execution of Village Múnsif's decree.

Under Regulation IV of 1816 the decrees of Village Múnsifs cannot be executed against other than personal property. Such decrees can be executed by a transferee of the decree and against the representative of a deceased judgment-debtor.

THESE cases were heard together. The facts in *Kalandan* v. *Pakrichi* were as follows :—

One Mayan having obtained a decree for Rs. 19-5-10 against the assets of Keloth Kunhi Paki, deceased, in suit 237 of 1885 on the file of the Village Múnsif of Tellicherry Amsham on 27th April 1885, the Village Múnsif, on the 25th June, attached a valuable house in Tellicherry in execution of this decree. On

* Civil Revision Petition 288 of 1885.
† Civil Revision Petition 307 of 1885.

the 29th June Acharath Pakrichi objected to the attachment on the ground that she had a kánam (mortgage) on the house of Rs. 500, and that the equity of redemption had been sold in execution of a decree of the Subordinate Judge of Tellicherry. She produced a summary decision of the District Múnsif's Court allowing her kánam claim and a registered kánam deed, but the Village Múnsif disregarded both and rejected her claim. On the 30th June the Village Múnsif allowed Mayan to assign his decree to Kunji Kalandan Háji. On the 27th August notice of the attachment was given to the District Múnsif's Court, and on the 28th August Pakrichi applied to that Court to refuse execution of the Village Múnsif's decree.

The District Múnsif, having sent notice to the assignee of the decree, refused execution, holding both the decree and the procedure in execution thereof to be illegal--

(1) because decree was passed against the assets of a deceased debtor;

(2) because valuable immovable property had been attached;

(3) because the validity of a kánam for Rs. 500 had been adjudicated on and the order of a District Múnsif declared invalid;

(4) because the assignment of the decree had been recognised.

On the 22nd September 1885, Kunji Kalandan Háji presented a petition to the High Court against the order of the District Múnsif of Tellicherry refusing to execute the decree on the ground that the District Múnsif was bound by law to send a peon to sell the property attached in execution of the decree of the Village Múnsif, and that the District Múnsif had misconstrued the provisions of Regulation IV of 1816.

This petition was styled a Civil Revision Petition (No. 288 of 1885), but under what provisions of law it was presented was not stated therein.

Mr. *Michell* for petitioner.

The case was referred to a Full Bench on 3rd November 1885.

In *Thammayya* v. *Venkanna*, the facts were as follows :—

In suit 11 of 1881 on the file of the Village Múnsif of Thamarapalli (near Cocanada) the defendant Venkanna agreed to pay to the plaintiff Thammayya Rs. 7-10-0 and prayed the Court

KALANDAN v. PAKRICHI. THAMMAYYA v. VENKANNA.

to pass a decree in accordance with this agreement. On the 24th January 1883 plaintiff applied for execution of this decree by attachment of the defendant's movable property. No such property having been found, the plaintiff applied on the 11th July 1884 for attachment of 1·29 acres of defendant's land. On the same day the Village Múnsif applied to the District Court for orders as to whether he could attach and sell land, and the District Court, on the 29th July, replied that the Village Múnsif had power to sell land, referring to *Rámasámi* v. *Angappa*.(1)

On 2nd October 1884 the Village Múnsif applied to the District Múnsif to send a peon to sell the land under the provisions of Regulation IV of 1816. The District Múnsif did not send a peon, but referred the matter to the District Court.

On the 17th of July 1885 the District Judge of Godávari (A. L. Lister), in a letter to the Registrar of the High Court, asked whether the rules regarding the proclamation and conduct of sales which came into force on 1st July 1885 applied to sales of immovable property conducted by Village Múnsifs and referred to the case of *Thammayya* v. *Venkanna*.

The High Court called for the records in this case, and on 3rd September 1885 the Court (Muttusámi Ayyar, Hutchins, Parker and Handley, JJ.) delivered the following Judgments :—

MUTTUSÁMI AYYAR, J.—I doubt if the decision in *Rámasámi* v. *Angappa* (1) is correct. The words used in s. 30, cl. 1 of Regulation IV of 1816, are "the property of the party cast," and appear to include immovable as well as movable property. But s. 5 and s. 27 limit the Village Múnsif's jurisdiction to personal property, and the procedure prescribed for the attachment and sale is not what is usually prescribed in regard to immovable property. The absence of a provision for the investigation of claims has also to be noted. The general scope of the Act is a matter which ought to be kept in view, I think, in construing particular sections. The reasonable construction, it seems to me, is that the expression 'the property of the party cast' means such property as the Village Múnsif has jurisdiction to deal with under the Act. Though the Regulation was passed in 1816, I do not understand that it was usual for Village Múnsifs to sell immovable property until recently.

(1) I.L.R., 7 Mad., 220.

HUTCHINS, J.—Mr. Lister is of course mistaken in asserting that Mr. Webster had placed no construction on the Regulation; he had set aside a Village Múnsif's refusal to proceed against immovable property; whether, as District Judge, he had power to make such an order is of course quite another matter. I cannot see that any inference can be drawn from the concluding words of cl. 5, s. 30. The whole question seems to turn on this as pointed out in our judgment. Can we say that 'property' means movable property only? If any of my learned colleagues can see their way to say that it does, I shall be only too glad to withdraw the decision and agree with Messrs. Lister and Weir.

Neither this Court nor Government can deprive the Múnsifs of their legal powers. The only remedy (supposing one to be necessary which is by no means proved by anything beyond Mr. Lister's apprehension) would be a legislative enactment.

PARKER, J.—I also, with Mr. Justice Muttusámi Ayyar, am inclined to doubt whether the decision in *Rámasámi* v. *Angappa* was correct. Unfortunately the case was not argued, but it is certainly arguable that a Regulation which, by its preamble and every other section, gave a Village Múnsif power to deal with personal property only, did not intend any other kind of property to be attachable under s. 30.

HANDLEY, J.—I agree with Mr. Justice Muttusámi Ayyar and Mr. Justice Parker in doubting the soundness of the decision in referred case 8 of 1883.

Looking at the whole scope of the Regulation, the wording of s. 30 and the absence of any of the usual provisions relating to sales of immovable property, it seems to me a not unreasonable construction to put upon the Regulation to hold that the word 'property' in the sections relating to execution of decrees does not include immovable property.

And the fact, if it be so as I understand, that the power to attach and sell immovable property has not been exercised until recently by Village Múnsifs would go to show that such was the view formerly taken by the Courts of the Presidency.

On the 19th of September the case was referred to a Full Bench by Kernan, Officiating CJ.

On 9th March 1886 these cases were argued before the Full Bench (Collins, CJ., Kernan, Muttusámi Ayyar, Brandt, and Parker, JJ.)

KALANDAN *v.* PAKRICHI. THAMMAYYA *v.* VENKANNA.

Mr. *Michell* for petitioner in C.R.P. 288.

The *Acting Advocate-General* (Mr. *Shephard*) for respondent.

In C.R.P. 307 the *Acting Advocate-General* (as *amicus curiæ*) argued the case.

The judgment of the Full Bench (Collins, CJ., Kernan, Muttusámi Ayyar, Brandt, and Parker, JJ.) was delivered by

KERNAN, J.—There is one question common to these cases, and that is, whether the decree of a Village Múnsif passed under Regulation IV of 1816 can be carried out by attachment of any property except personal property, or by attachment of property in land or houses. This depends on what is the proper construction of the Regulation in respect of the word 'property' mentioned in s. 30. That section provides that, if the decree amount be not paid, the Village Múnsif shall attach the property of the party cast, and fix a day for the sale, and shall send notice thereof to the District Múnsif, who shall send a peon to sell the attached property, and parts 2, 3 and 4 of s. 30 provide that the peon so sent shall sell the property and receive the purchase money and pay the creditor, and the balance, after deducting expenses, to the party cast.

There is no doubt that the word 'property' is a generic term, of which personal or movable property and real or immovable property are species, and, therefore, under the word property all sorts of property might be included; but whether the word property was used in its general sense or as meaning personal or movable property only must depend upon the intention of the Legislature, to be discovered from the language used, having regard to the subject legislated for. Section 5 empowers Village Múnsifs to hear and determine, of their own authority, suits without appeal for sums of money or other *personal property* not exceeding 10 Arcot rupees against persons resident within their jurisdiction. Section 11 prescribes that the plaint shall describe, amongst other things, the "total amount or value of the property" claimed. It is clear that under s. 5 'property' in s. 11 must mean *personal* property and cannot mean real or immovable property, as no other than sums of money or other personal property can be claimed. It is an ordinary canon of construction that, whenever a particular word is used, having in an Act a defined meaning, and is used afterwards in the Act, the same meaning shall be given to it all through, unless from the context or otherwise the word

when elsewhere used, appears to have been used in a different sense from that in which it was formerly used. Why then should the word 'property' in s. 30 have a different meaning from the same word in s. 11?

This view receives strong corroboration when it is recollected that, under s. 5, a suit before the Village Múnsif can only be brought for money or for personal property.

Now, if a suit cannot be brought for real or immovable property, would it not be quite inconsistent to allow execution to be issued against such real or immovable property? To allow this to be done would be to effect indirectly what could not be done directly. Assuming the case of an attachment of immovable property and that any person not the defendant was *boná fide* entitled to and in possesion of it, could the Múnsif determine that claim? If he could, would not that power be inconsistent with s. 5, as he would practically determine a suit *not* for personal property but for real property; but no provision is made in the Regulation in such circumstances. Again, suppose the Village Múnsif had no power to entertain the claim of such a *boná fide* owner, could it be supposed that the Regulation contemplated that such claim was to be disregarded and the property of the wrong person sold without enquiry?

No doubt if personal property, say, a cow, not belonging to the debtor, is seized, the true owner, it might be contended, would have no right to stop the sale; but this seems to us a wrong view because the Village Múnsif has power to determine as to personal property. In the case of personal property, the enquiry is in most cases simple; generally the right of property is accompanied by possession, and such possession is not subject to mortgage or assignment to another person. In the case of land, the possession may be in one man and the right of property in that land may be in another. The Regulation was suitable to the recovery of very small claims by remedy against personal property, but is wholly unsuited for the recovery of claims against immovable property. Could it be reasonably contended that an interest in immovable property is to be sold by a peon who is to receive the produce of the sale and pay the debt to the creditor and the balance to the debtor? What interest in the immovable property should be sold, and how is the peon to know what such interest was?

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The contemporaneous legislation shows that, when the Legislature intended that real or immovable property should be liable to be sold by District Múnsifs, express power to that effect was given. See Regulation VI of 1816 (passed on the same day as No. IV), s. 45. From the District Múnsifs' Courts appeal lay to other Courts as provided by the Regulation. There is neither express power to sell land nor is there an appeal given by the Regulation IV of 1816. There appears therefore very good reason to believe that the Legislature did not intend, by the use of the word 'property' in Regulation IV of 1816, to authorize the sale of real or immovable property under a decree by a Village Múnsif. If, therefore, such was not the intention of the Legislature, then the power is not given by the regulation.

Long usage, save in only one case, so far as the High Court knows, from 1816 up to within the last two or three years, has been to treat the Regulation as not conferring this power—see also the Circular Orders of 1829 prohibiting Village Múnsifs from executing decrees against land.

Mr. Webster, when Judge of Coimbatore, stated in a case before him that the word 'property' was large enough to include land. The case of *Rámasámi* v. *Angappa* (1) was not argued, and the Court merely say they are not prepared to say that Mr. Webster's judgment was incorrect, and observe that the word 'property' without qualification applies to property of all kinds.

The several Procedure Codes never were applicable to the Village Múnsifs' Courts. The Code provides for all cases of seizure and sale of lands and for adjudication of claims to land and appeals in respect thereof so as to do complete justice between suitors. In the absence of such powers from Regulation IV, is it not therefore possible to hold the law has vested in Courts exercising such limited and petty jurisdiction the power of executing decrees against land which may be subject to mortgage, lien, charges and limitations of interest, without appeal.

We hold therefore that the Village Múnsif's decree could not be levied by seizure or sale of land in C.R.P. No. 288 and dismiss it.

As to the suit No. 11 of 1881, so far as it sought a decree

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(1) I.L.R., 7 Mad., 220.

against a personal representative, we do not see why a decree should not lie under the Regulation, nor do we see any objection to a transferee of a decree obtaining execution of it. Both the above cases, so far as they are for small sums, are within the object and intention of the Regulation.

APPELLATE CIVIL—FULL BENCH.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, Mr. Justice Kernan, Mr. Justice Muttusámi Ayyar, Mr. Justice Brandt, and Mr. Justice Parker.

1886. March 9, 31.

RÁMAN, PETITIONER,
and
PAKRICHI, RESPONDENT.*

Regulation IV of 1816, ss. 29, 35—Remedy confined to parties to Suit.

The remedies provided by s. 35 of Regulation IV of 1816 against Village Múnsifs are confined to persons who are parties to suits before such Village Múnsifs.

APPLICATION under s. 622 of the Code of Civil Procedure to set aside an order of the Subordinate Judge of North Malabar passed on a petition presented by Acharath Pakrichi under ss. 29 and 35 of Regulation IV of 1816, complaining against the Village Múnsif of Tellicherry Amsham, Kunhi Ráman Náyar.

The Subordinate Judge (K. Kunjan Menon) awarded Rs. 25 damages and costs against the Village Múnsif.

This case being connected with Civil Revision Petition 288 of 1885 (1) was heard with it and disposed of by the Full Bench.

The facts necessary for the purpose of this report are as follows :—

The Village Múnsif (petitioner) having attached a house in execution of a decree passed by him in a suit to which Acharath Pakrichi (the respondent) was no party, she objected to the attachment on various grounds which were overruled by the Village Múnsif.

She thereupon complained to the Subordinate Judge that she had been injured by the conduct of the Village Múnsif.

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* Civil Revision Petition 355 of 1885.

(1) See *ante* p. 378.