

RAMA-
CHANDRA
v.
VENKATA-
RAMA.

the property in execution of a decree against the present defendants, an order was passed in favor of the transferor. Such order cannot be accepted as an adjudication within the meaning of the proviso, nor in fact was it an adjudication as between the transferor and the debtors. Our attention is next drawn to the judgment in original suit No. 131 of 1873 brought to recover the first instalment due under the mortgage. That again is no adjudication on the claim now set up. The appellants, however, were clearly entitled to interest on the price paid not only up to date of plaint but up to date of decree, and the decree must be amended by awarding interest on the sum of Rs. 2,600 at 4 per cent. for the interval. As regards interest from the date of the assignment to the date on which Rs. 2,600 was paid, we are referred to no evidence that the plaintiffs did make any payment over and above the Rs. 2,600.

As to the costs of attachment before judgment, the Judge considered the attachment unnecessary and refused to allow them as costs in the suit. We see no sufficient reason to interfere with the discretion exercised in the matter. The decree must be amended as indicated above, but in other respects is affirmed.

Under the circumstances we direct that each party do bear their own costs.

APPELLATE CRIMINAL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Weir.*

QUEEN-EMPRESS

v.

SHAIK IBRAHIM.*

*District Municipalities Act (Madras)—Act IV of 1884, s. 103—Attachment of
movable property—Doors of a house.*

The doors of a house are not attachable as movable property under District Municipalities Act (Madras), s. 103.

CASE referred for the orders of the High Court by A. W. B. Higgens, Acting District Magistrate of Ganjam. The facts of this case were stated in the letter of reference as follows:—

* Criminal Revision Case No. 631 of 1890.

“The Sub-Magistrate convicted one Shaik Ibrahim of Chicacole for resisting an attachment made under section 103 of Madras Municipal Act IV of 1884, and sentenced him to pay a fine of Rs. 5, but the Principal Assistant Magistrate reversed the conviction on appeal on the ground that the front doors of appellant’s house are not movable property and the house to which they belonged was not the house in respect of which the tax was due.

“I consider that the conviction should be upheld, as section 103 of the Act empowers the Chairman to distrain movable property of defaulter wherever it is, and as attaching doors is a most frequent form of attachment.”

The *Government Pleader* and *Public Prosecutor* (Mr. *Powell*) for the Crown.

JUDGMENT.—This was a case referred to the High Court by the Acting District Magistrate of Ganjam.

The principal facts of the case were as follows:—Shaik Ibrahim of Chicacole was convicted for resisting an attachment made under section 103 of the Madras Municipal Act IV of 1884 and sentenced to pay a fine of Rs. 5. On appeal, the Principal Assistant Magistrate reversed the conviction, and the question for the High Court to decide is, was such reversal of the conviction right.

It appears that Shaik Ibrahim was assessed in the sum of Rs. 5 for house-tax under the above Act, and, on his refusing to pay, a warrant of attachment of his movable property was granted. The officer charged with the execution of the attachment went to the dwelling house of Shaik Ibrahim and demanded the tax, and, upon being told by Shaik Ibrahim to go to the house upon which the tax was due and seize movable property there, refused to do so and proceeded to take off the outer doors of the house. Shaik Ibrahim tried to prevent the removal of the doors of the house, but the officer and those with him persisted and ultimately removed the doors from their hinges. The attempt made by Shaik Ibrahim to prevent his doors from being removed was the resistance to the attachment with which he was charged.

Section 103 of the Madras Act IV of 1884 enables a municipality to recover the amount of a tax remaining unpaid after fifteen days’ service of a notice by distress and sale of the movable property of the defaulter, and the question before us is whether the outer door of a house is movable property.

QUEEN-
EMPRESS
v.
SHAIK
IBRAHIM.

QUEEN-
EMPRESS
v.
SHAIK
IBRAHIM.

We are clearly of opinion that the Principal Assistant Magistrate was right in reversing the conviction: the front or outer door of a house is not movable property, and is, therefore, not liable to be distrained. The terms immovable and movable property have been defined in various Acts of the Indian Legislature (General Clauses Act I of 1868, section 2 (5) and (6), Indian Penal Code, section 22, and Indian Registration Act III of 1877, section 3); the definitions thus given render it clear that that which is attached to the earth is not movable property, and the words attached to the earth have been interpreted by the Legislature itself to mean attached to what is imbedded in the earth for the permanent beneficial enjoyment of that to which it is attached, Transfer of Property Act, section 3 (c). Moreover by the Transfer of Property Act (IV of 1882), section 8, it is enacted that when the property is a house, the transfer thereof includes, *inter alia*, the doors.

It has been held in *Peru Bepari v. Ronuo Maifarash*(1) that the doors of a building form part of an immovable property. We are, therefore, of opinion that the conviction was wrong and that the doors of a house cannot be distrained under the first portion of clause (1) of section 103 of the Madras Act IV of 1884.

APPELLATE CIVIL.

Before Mr. Justice Mattusami Ayyar and Mr. Justice Shephard.

KALIMA (DEFENDANT No. 1), APPELLANT IN APPEAL No. 28
OF 1888,

MAHOMED (DEFENDANT No. 7), APPELLANT IN APPEAL
No. 66 OF 1888,

v.

NAINAN KUTTI (PLAINTIFF), RESPONDENT IN BOTH CASES.*

Civil Procedure Code—Act XIV of 1882, s. 331—Appeal—Jurisdiction—Civil Courts Act (Madras)—Act III of 1873, s. 13.

The plaintiff being the holder of a decree of a Subordinate Court for more than Rs. 5,000 was obstructed in execution by the present defendants. He applied to

(1) I.L.R., 11 Cal., 164.

* Appeals Nos. 28 and 66 of 1888.