

## APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

VENKATARAMA (PETITIONER), APPELLANT,

v.

1890.  
Jan. 6.

SENTHIVELU AND ANOTHER (COUNTER-PETITIONERS), RESPONDENTS.\*

*Civil Procedure Code, s. 234—Hindu Law—Execution of a decree against the son of a Hindu judgment-debtor—Determination of questions as to the binding nature of the decree debt.*

In execution of a money decree passed against a Hindu, since deceased, ancestral property in the possession of his son was attached. A petition by the son objecting that the property was not liable to be attached in his hands was dismissed:

*Held*, that the order dismissing the petition was wrong, for when a judgment-creditor seeks to attach ancestral property after it has vested in the son by survivorship under Hindu law upon the father's death, he cannot be considered as executing the decree against the property of the deceased judgment-debtor within the meaning of s. 234 of the Code of Civil Procedure.

SECOND APPEALS against the orders of H. T. Ross, Acting District Judge of Madura, in civil miscellaneous appeals Nos. 17 and 19 of 1888, reversing in part the order of A. Sami Ayyar, District Munsif of Paramagudi, on civil miscellaneous petition No. 935 of 1887.

An application was made for the execution of a money decree passed in original suit No. 332 of 1877 and notice was issued under Civil Procedure Code, s. 248, to the son of the deceased judgment-debtor to show cause against the execution. No cause having been shown, execution was ordered and attachment was placed on certain property in the possession of the son, who thereupon presented the above petition objecting to the execution on the ground that the property proceeded against was not liable to satisfy the decree.

The petitioner was found to have been a minor at the date of the application for execution; and his petition was accordingly heard. The District Munsif held that the petitioner's objection was valid in respect of one moiety of the property which he accord-

\* Appeals against Appellate Orders Nos. 13 and 14 of 1889.

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ingly released from attachment, but he maintained the attachment on the other moiety.

Both parties appealed to the District Court against the above order. The District Judge came to the conclusion that the property in question was ancestral property, and said:—

“ If I understand the latest decisions on the question of the son’s liability for his father’s debts aright, the law, as at present settled, may be taken to be that it makes no difference that the decree against the father was a money decree to which the son was not a party, or that the estate which the decree-creditor seeks to make liable is ancestral estate; but that such estate in the son’s hands is answerable for the father’s decree-debt unless the son can show that the debt was contracted for immoral or illegal purposes not imposing on him the pious duty of discharging it. There is no attempt in the present case to show anything of the kind, and I must hold that the two-thirds of three-eighths of Kilakanjiran-kulam now in petitioner’s hands under exhibit A and attached by the counter-petitioner is liable for counter-petitioner’s decree of 1st December 1877 against petitioner’s father.”

The District Judge accordingly set aside the orders of the District Munsif so far as it annulled the attachment.

The petitioner preferred these appeals.

*Sivasami Ayyar, Krishnasami Ayyar and Sundaram Ayyar* for appellants.

*Ramachandra Ayyar* for respondents.

JUDGMENT.—We do not consider that the Judge was right in upholding the attachment. His opinion is not in accordance with the course of decisions of the High Court (see *Zemindar of Sivagiri v. Alwar Ayyangar*(1), *Hanumantha v. Hanumayya*(2), *Muttayan v. Zamindar of Sivagiri*(3), *Arunachala v. Zamindar of Sivagiri*(4), *Muttia v. Virammal*(5), *Ariabudra v. Dorasami*(6)). The principle recognized by them is that the Courts are not at liberty to extend the scope of the decree under s. 234 of the Code of Civil Procedure; though the judgment-creditor may enforce the pious obligation of the son under Hindu law by a regular suit. When, therefore, there is a money decree against the father, and when the judg-

(1) I.L.R., 3 Mad., 42.

(3) I.L.R., 6 Mad., 1.

(5) I.L.R., 10 Mad., 283.

(2) I.L.R., 5 Mad., 232.

(4) I.L.R., 7 Mad., 328.

(6) I.L.R., 11 Mad., 413.

ment-creditor seeks to attach ancestral property after it has vested in the son by survivorship under Hindu law upon the father's death, he cannot be considered as executing the decree against the property of the deceased judgment-debtor within the meaning of s. 234. How far the son's pious obligation would make him liable for the decree debt is a matter to be investigated in a fresh suit. The respondents' pleader concedes that the course of decisions is against him, but contends that the attachment made by Venkatanarayana Pillai in May 1884 was in force when the attachment now in dispute was made. Having regard to the facts set out by the Judge, we are unable to accept this view. If the former attachment were in force, there was no necessity for the respondents' making the present attachment.

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We set aside the orders of the Courts below and the attachment of two-thirds of three-eighths of Kilakanjirankulam. The respondents will pay the appellant's costs throughout.

## APPELLATE CIVIL.

*Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.*

ELAYADATH (COUNTER-PETITIONER No. 1), APPELLANT,

v.

KRISHNA (PETITIONER), RESPONDENT.\*

1889.  
December 4.

*Transfer of Property Act—Act IV of 1882, ss. 92, 93—Time fixed for redemption—  
Application to execute the decree.*

In a suit to redeem a kanom a redemption decree was passed which provided that the kanom amount and the value of improvements be paid in three months. The decree amount was not paid within that period, but the decree-holder applied to execute the decree at a later date:

*Held*, that the decree-holder was not then entitled to have the decree executed. *Poresh Nath Mojudar v. Ramjadar Mojudar* (L.L.R., 16 Cal., 246) dissented from.

SECOND APPEAL against the order of L. Moore, Acting District Judge of South Malabar, in civil miscellaneous appeal No. 317 of 1888 reversing the order of V. Raman Menon, District Munsif of Angadipuram, in civil miscellaneous petition No. 419 of 1887,

\* Appeal against Appellate Order No. 5 of 1889.