

RATNA  
MUDALI  
*In re.*

MUTTUSAMI AYYAR, J.—In this case the accused, a Hindú, had sexual intercourse with a woman within an enclosure surrounding the tomb of a Fakir at 9 P.M. on the 5th October last. The District Magistrate considers that the accused selected the place as one in which his act was likely at 9 o'clock at night to pass undetected, and that he had no intention of insulting the religion of the Muhammadans in his village, and in this opinion I also concur. Though the primary intention of the accused was to gratify his lust in a place where his act was considered likely to escape detection, I cannot say that he had no knowledge that his act was likely, if detected, to be considered by the Muhammadans to be a defilement, insulting to their religion or to wound their feelings. There is, however, no evidence to show that the tomb in question was used as a place of worship or that any particular object held sacred was defiled, and therefore the conviction under s. 295 cannot be supported. But I also think that upon the facts found a conviction under s. 297 can be supported. The accused committed a trespass on a place of sepulture and knew that his act, if detected, was likely to wound the feelings of the Muhammadans. I do not consider that his belief that the act would probably not be detected would make any difference though it may no doubt well be taken into consideration in awarding punishment. I would alter the conviction to one under s. 297 and reduce the sentence as proposed by Mr. Justice Brandt.

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## APPELLATE CIVIL.

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

KAVERI (JUDGMENT-DEBTOR), APPELLANT,  
and

ANANTHAYYA (DECREE-HOLDER), RESPONDENT.\*

*Transfer of Property Act, ss. 2, 99—Attachment of property mortgaged  
prior to 1882*

1886.  
Dec. 3, 6.

In 1884, a mortgagee obtained a decree for arrears of interest due under a mortgage deed of 1879 and in execution of the decree attached and applied for the sale of the land mortgaged :

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\* Appeal against Order 87 of 1886.

KAVERI  
v.  
ANANTHAYYA.

*Held*, that by reason of s. 99 of the Transfer of Property Act, 1882, the land could not be sold otherwise than by a suit instituted under s. 67 of the said Act.

APPEAL from an order of J. W. Best, District Judge of South Canara, reversing an order of M. Mundappa Bangera, District Munsif of Karkal, passed in execution proceedings in suit 199 of 1884.

The decree-holder, Ananthayya, having in 1884 obtained a decree for arrears of interest due under a mortgage deed executed in 1879 by the judgment-debtor, Kaveri Amma, applied to have the mortgaged property attached and sold in satisfaction of the decree.

The judgment-debtor objected to the sale under s. 99 of the Transfer of Property Act, 1882.

The Munsif allowed the objection and dismissed the application.

On appeal the District Judge reversed this decree on the ground that, under s. 2 of the Transfer of Property Act, s. 99 was not applicable to the case.

The judgment-debtor appealed.

*Srinivasa Rau* for appellant.

Respondent was not represented.

The Court (Collins, C.J., and Parker, J.) delivered the following

JUDGMENT:—The decree was obtained in 1884 for arrears of interest due for three years and in execution of that decree the plaintiff got the mortgaged property attached. The District Munsif held that s. 99 of the Transfer of Property Act debarred the decree-holder from bringing the property to sale otherwise than by instituting a suit under s. 67 of that Act. On appeal the District Judge reversed this order and directed execution to proceed on the ground that s. 2 saved any right or liability arising out of a legal relation constituted before the Act came into force, or any relief in respect of such right or liability from the provisions of the Act.

Although the legal relation of mortgagor and mortgagee was constituted in 1879, the right to attach the property and bring it to sale and the relief in respect to such right arose only out of the decree in 1884 which was subsequent to the passing of the Transfer of Property Act. The right to enforce the decree is a substantive right, but the mode of enforcing it is a matter of procedure. By

the decree in 1884 the decree-holder did not, through the operation of s. 99 of Act IV of 1882, gain a right to have the property sold in satisfaction of the decree, and therefore his procedure must be governed by s. 67. See *Dinendra Nath Sanyal v. Chandra Kishore Munshi*, (1) and *Bhobo Sundari Debi v. Rakhal Chunder Bose*. (2)

KAVERI  
2.  
ANANTHAYYA.

The order of the District Judge must be set aside with costs, and that of the District Munsif restored.

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## APPELLATE CRIMINAL.

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

QUEEN-EMPRESS

against

BODAPPA.\*

1886.  
Dec. 17.

*Arms Act, 1878, ss. 5, 19.*

B. having obtained a license under the Arms Act, 1878, for a match-lock, had the same converted into a percussion gun. He was convicted under s. 19 of the said Act, on the ground that the license did not permit him to keep a percussion gun :

*Held* that the conviction was bad.

CASE referred under s. 438 of the Code of Criminal Procedure by G. Stokes, Acting District Magistrate of Cuddapah.

The facts of the case were stated as follows by the District Magistrate :—

“The accused has been charged with possessing a cap gun, while the license he produced covered only a match-lock. The defence of the accused is, that the gun now in his possession and about which the question has arisen is the same that he had with him when he obtained the license, but that for convenience sake he had it altered from a match-lock to a cap gun after he obtained the license. .

“In convicting the accused, the Joint Magistrate has not been without doubt as to the legality of the conviction. He has found distinctly that the license produced was granted for the very gun in question. I consider that the legality of the conviction is very

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(1) I.L.R., 12 Cal., 436.

(2) I.L.R., 12 Cal., 583.

\* Criminal Revision Case 467 of 1886.