such rent. We think the plaintiff is entitled to recover 12 years' rent or revenue up to the date of suit under art. 131 as a recurring right, and also under s. 132 as money charged on land. The fact that the trustees of the mosque did not proceed to recover rent which accrued more than 12 years before suit cannot bar their right to the rents accrued during 12 years before suit.

We reverse the decrees of the Lower Courts and make a decree for payment by the defendants who admit their possession of the lands during the accruing of the 12 years' rent or revenue with costs of this suit and appeal.

APPELLATE CIVIL.

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

RAVUNNI MENON (PLAINTIFF), APPELLANT,

and

KUNJU NAYAR AND OTHERS (DEFENDANTS), RESPONDENTS.*

1886. August 18. November 4.

Civil Procedure Code, s. 244.

R having obtained a decree for money against K, the karnavan of the defendants, K died and the defendants were made parties to the suit as representatives of K.

Tarwad property was then attached by R, and the defendants having objected, the Court raised the attachment. R sued for a declaration that the property released was liable to be sold:

Held, that the suit was barred by s. 244 of the Code of Civil Procedure.

APPEAL from the decree of V. P. D'Rozario, Subordinate Judge of South Malabar, reversing the decree of T. Subbannáchárya, District Múnsif of Kutnád, in suit 77 of 1884.

The facts appear sufficiently from the judgment of the Court (Collins, C.J., and Brandt, J.)

Párathasaradhi Ayyangár and *Sankaran Náyar* for appellant.

Sankara Menon for respondents.

JUDGMENT.—Padinharam Kunnath Ravunni Menon, the appellant (plaintiff), obtained a decree for money in original suit 314 of 1882 on the file of the District Múnsif of Chowgat against Kondi Menon, the late karnavan of the defendants (respondents).

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* Second Appeal 297 of 1886.

RAVUNNI MENON v. KUNJU NÁYAR.

The judgment-debtor having died, the respondents were brought upon the record in original suit 314 of 1882, on the application of the appellant: when the latter proceeded to execute the decree by attaching certain immovable property, the respondents objected on the ground that the property attached was tarwad property and therefore not liable in execution of the decree: on their petition of objection, an order, purporting (as we are informed) to be passed under s. 280, Civil Procedure Code, was made on the 13th April 1883, releasing the property from attachment. On the 12th February 1884, the appellant filed this suit.

The respondents pleaded, first that the judgment-debt was not incurred by Kondi Menon in his capacity of karnavan; that if it was, it was incurred for purposes not binding on the tarwad; and that the properties were not, as alleged by the plaintiff in the suit, the self-acquisition of Kondi Menon.

The Court of First Instance gave decree for the appellant. On appeal, the Subordinate Judge dismissed the suit on the ground that the questions in dispute between the parties are questions arising between them in execution of the decree in original suit 314 of 1882, and must therefore be decided in execution, under the provisions of s. 244, Civil Procedure Code, and cannot be made the subject of a separate suit; and he refers to the case of *Kuriyali* v. *Mayan*.(1)

It is contended in appeal that the present suit will lie: that an order having been made against the appellant under s. 280, Civil Procedure Code, he must either file a suit as allowed under section 283 or accept the decision as final; and reference is made to *Arunáchala* v. *Zamíndár of Sivagiri*,(2) to *Rámakrishna* v. *Namasivaya*,(3) and to *Ittiachan* v. *Velappan*.(4)

On the other side, it is urged that *Kuriyali* v. *Mayan* is directly in point, and concludes the appellant, and that the other cases cited are not to the point or may be distinguished.

The Full Bench case of *Rámakrishna* v. *Namasivaya* is not in point here: the two members of the undivided family who had hypothecated the family property were alive; the sons of those members had not been made parties to the original suit, either before or after decree.

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(1) I.L.R., 7-Mad., 255.
(2) I.L.R., 7 Mad., 328.
(3) I.L.R., 7 Mad., 294.
(4) I.L.R., 8 Mad., 488.

One of the learned Judges who took part in the case of *Kuriyali* v. *Mayan* also sat on the bench which decided *Arunáchala* v. *Zamindár of Sivagiri*, but no reference is made in the latter to the former case. It is to be presumed then that the learned Judge who heard both cases was of opinion that there is nothing contradictory in the two decisions; and if there is not, then there is nothing to prevent us from following the decision in *Kuriyali* v. *Mayan*.

A claim may be preferred by a judgment-debtor, as well as by a stranger, under s. 278, Civil Procedure Code, provided that the claim be of the nature specified in the following sections, *e.g.*, on the ground that the property when attached was in the possession of the judgment-debtor, not on his own account, but in trust for a third party (see *Shankar Dial* v. *Amin Haidar*(1) and cases there cited); but where, as in this case, the objection that the property attached is not liable to attachment is made, not on one of the grounds specified in s. 281 or in s. 282, but on a ground which rises a question determinable under some other special section, *e.g.*, under s. 234 and s. 244, in execution, then the order made should not be passed under s. 280; and the fact that an order was passed purporting to have been made under that section cannot give the appellant a right to file a separate suit, whether under the provisions of s. 283 or otherwise. It remains to decide whether *Arunáchala's case* is clear authority for the proposition that a suit of the nature before us will lie; and we are of opinion that it is not.

The transactions out of which the suit in that case arose were very similar to those which led to the suit eventually disposed of in appeal by the Privy Council, *Muttayan* v. *Zamindár of Sivagiri*.(2) The latter suit was in the first instance thrown out on the ground that the questions therein raised could be disposed of in execution of a decree in another suit in which the plaintiff had already taken out execution, but this Court reversed that judgment stating that "the questions raised ..... are the liability of the property in the hands of the present zamíndár to satisfy the decree obtained by the plaintiff against the late zamíndár..... The question of liability and of its extent being one of very considerable difficulty.....a suit regularly conducted was the

(1) I.L.R., 2 All., 752. (2) I.L.R., 6 Mad., 1.

RAVUNNI MENON v. KUNJU NÁYAR.

most appropriate method of determining it," and the suit was determined by their Lordships on the merits.

This fact, however, clearly cannot be taken as authority for the proposition that any and every question at issue between parties in execution of the decree should, even if it might, be determined by separate suit.

The decision in *Arunáchala's case* was based, in the first instance, on the ground that the Judicial Committee had allowed a similar suit in precisely similar circumstances against the same judgment-debtor, and that after that decision of the Privy Council, it could not be denied that the zamíndárí ought to be made available, if not in execution (and in proceedings in execution, the defendant had succeeded in his contention that the zamíndárí was not assets in his hands available in execution) than in a separate suit; and, secondly, that after the death of the original debtor-zamíndár "since it had been decided that the estate did not constitute assets which could be seized in execution," it was open to the creditor by a separate suit to enforce the debt, so far as it was binding on the deceased debtor, against his successor.

In the case before us, it is not clear on what ground execution was refused, whether on the ground that the properties attached did not constitute assets of the deceased decree-debtor in their hands, or that being tarwad property it was not liable in execution of a decree not passed against the deceased in his capacity of karnavan of the tarwad : but it does appear that the appellant then pleaded that the property was the separate property of the deceased (in which case, supposing that it was undisposed of at his death, it would have become the property of the tarwad) and it is to be presumed, the contrary not being shown, that the finding on this point, viz., whether or not the property was the separate property of the deceased was against the appellant, and had the order then made been made, as it could and should have been made, not under section 278 but under section 244, the appellant would have had a right of appeal against that order, and of second appeal from any order passed in appeal therefrom, and as before said, the erroneous passing of an order purporting to be made under section 280 cannot give him a right to bring a separate suit.

From the decision in *Ittiachan* v. *Velappan*, it does no doubt appear that a separate suit was held to lie for a declaration that

tarwad property attached in execution of a decree obtained by the plaintiff in another suit, and released from attachment on the objections of two members of the family, defendants in the second suit, was liable in satisfaction of the decree in the original suit: but in that case, the debtor who had contracted the debt was alive, and was a party to the second suit; and what was decided by the lower courts was that the circumstances were insufficient to invalidate the obligation created by the karnavan, the original debtor, and that the money having been raised and used for the benefit of the tarwad, and the property being tarwad property, it was available for sale to satisfy the original decree.

It was held eventually by this court that the original debtor not having been in the first suit impleaded as karnavan, and there being nothing on the face of the proceedings to show that he was impleaded as karnavan, the suit must fail. But this is immaterial for our present purpose.

In the present case, however, it is, as before stated, not shown that the question in issue in execution between the judgment-creditor and those whom he had himself brought on the record, as the representatives of the deceased judgment-debtor, was not one which could not have been, and ought not to have been, decided in execution and in execution alone, and we hold that it was rightly decided that the present suit will not lie; and we dismiss this appeal with costs.

APPELLATE CRIMINAL.

Before Mr. Justice Muttusámi Ayyar, Mr. Justice Brandt, and Mr. Justice Parker.

QUEEN-EMPRESS

against

KAMANDU.*

1886.
April 12.
July 28.
October 29.

Boat Rules in Madras Ports—Refusal to carry cargo without reasonable excuse.

By the Boat Rules of a certain port it was provided, (1) that all licensed boats must carry such number of passengers and quantity of goods as should be expressed in the license; and (2) that the owner of a licensed boat who should refuse to let his boat on

* Criminal Revision Case 706 of 1885.