

APPELLATE CIVIL.

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

VENKATASAMI (JUDGMENT-CREDITOR), APPELLANT,
and

NARAYANARATNAM (JUDGMENT-CREDITOR), RESPONDENT.*

1887.
Aug. 26,
Sept. 1.

*Civil Procedure Code, ss. 228, 239, 344, 360—Application to be declared insolvent
made to Court to which decree was transferred for execution.*

Where a decree had been transferred for execution from the Court of the District Munsif of E, to that of the District Munsif of B, and an application was made by the judgment-debtor under s. 344 of the Code of Civil Procedure to be declared an insolvent and entertained by the latter Court :

Held, that the District Munsif of B. had no jurisdiction to entertain the application.

APPEAL against an order of E. Subbarayadu, District Munsif of Bezwada, passed under s. 344 of the Code of Civil Procedure, declaring one Golla Narayanaratnam, defendant in suit 99 of 1882, on the file of the District Munsif of Ellore, an insolvent.

The appeal was preferred by Simakurti Venkatsami, an opposing creditor, on the ground that the Court held no jurisdiction to entertain the application.

Parthasarali Ayyangar for appellant.

Venkata Subba Rau for respondent.

The facts necessary for the purpose of this report are set out in the judgment of the Court (Collins, C.J., and Parker, J.).

JUDGMENT.—A decree was passed against the respondent in the Court of the District Munsif of Ellore, and was transferred for execution to the Court of the District Munsif of Bezwada. On the respondent being arrested, he applied to the District Munsif of Bezwada to be declared an insolvent, and has been so declared.

The ground taken in appeal is that the District Munsif of Bezwada acted without jurisdiction in entertaining the insolvency application.

The second paragraph of s. 360 of the Code of Civil Procedure provides that any Court invested by the Local Government with

* Appeal against Order No. 56 of 1887.

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the powers conferred on District Courts by s. 344-359 may entertain any application under s. 344 by any person arrested in execution of a decree of such Court. In the present case the decree in execution of which the respondent was arrested was passed by the Court of the District Munsif of Ellore, and not by the Court of the District Munsif of Bezwada.

But it is contended that an application to be declared an insolvent, when made on an arrest, is part of the proceedings in execution, and that under s. 228 of the Code of Civil Procedure the Court executing a decree has the same powers as if the decree had been passed by itself. We cannot accede to this contention. The procedure for declaring a judgment-debtor an insolvent falls under a different chapter of the Code, and may be resorted to without the judgment-debtor having been first arrested.

The powers of a Court executing the decree of another Court are limited, and, we think, the proper procedure for the District Munsif of Bezwada would have been to stay proceedings under s. 239 for a reasonable time in order to enable the judgment-debtor to apply to the District Court to be declared an insolvent, such discharge would not under s. 241 have prevented the person of the judgment-debtor being retaken in execution, if his application to be declared an insolvent was eventually dismissed. The terms of s. 360 preclude a District Munsif from entertaining insolvency application by a person arrested in execution of a decree of any other Court than his own.

We must allow the appeal and set aside the order declaring respondent an insolvent, but as the point is a new one and the objection was not taken in the Court below, we will make no order as to costs.