

## APPELLATE CIVIL.

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

KUNHAMMAD AND ANOTHER (DEFENDANTS NOS. 1 AND 3)  
APPELLANTS,

and

KUTTI AND OTHERS (PLAINTIFFS), RESPONDENTS.\*

*Civil Procedure Code, s. 234—Sale in execution of decree against deceased Muhammadan's estate—Representation of deceased by some only of his next-of-kin—Sale held to be valid.*

V., a Muhammadan woman, died, leaving her husband and several minor children as her representatives. In execution of a money decree obtained against V., the creditor attached certain land which belonged to V. and made her husband and two of her children parties to the execution proceedings. The land was sold and purchased by the decree-holder :

*Held*, in a suit brought by the children of V. to set aside the sale on the ground, *inter alia*, that some of them were no parties to the proceedings in execution, and that the others, being minors at the time, had not been represented by a guardian appointed by the Court, that the sale was valid.

APPEAL from the decree of E. K. Krishnan, Subordinate Judge at Calicut, modifying the decree of P. J. Ittियerah, District Munsif of Kutnad, in suit No. 203 of 1886.

The plaintiffs were three sons and a daughter of one Viyyathamma, a deceased Muhammadan.

Defendant No. 1 was the assignee of a decree for money against Viyyathamma, in execution of which he attached, brought to sale, and purchased certain land. Defendant No. 2 was the husband of Viyyathamma, and defendant No. 3 was a purchaser from defendant No. 1. This suit was brought to set aside the sale.

On the death of Viyyathamma, defendant No. 2 and two of the plaintiffs only were made parties to the execution proceedings as representatives of the deceased. All the plaintiffs were then minors and no guardian *ad litem* was appointed, but their father, defendant No. 2, objected to the execution proceedings on behalf

\* Second Appeal No. 35 of 1888.

of himself and of plaintiffs Nos. 1 and 2, and also took ineffectual proceedings to set aside the sale as their guardian. KUNHAMMAD  
KUTTI.

The Munsif dismissed the suit holding, *inter alia*, that the plaintiffs Nos. 1 and 2 were sufficiently represented by their father although no formal appointment had been made by the Court, inasmuch as the Court had subsequently entertained a petition presented by defendant No. 2 as their guardian.

On appeal the Subordinate Judge, while agreeing with the Munsif that plaintiffs Nos. 1 and 2 had been sufficiently represented by defendant No. 2, reversed his decree and set aside the sale on the ground that plaintiffs Nos. 3 and 4 had not been represented at all in the execution proceedings.

Defendants Nos. 1 and 3 appealed.

*Sankaran Nayar* and *Govinda Menon* for appellants referred to *Khushrobbhai Nasarwanji v. Hormazsha Phirozsha*(1).

*Ramasami Mudaliar* for respondents referred to *Ramasami v. Bagirathi*(2) and *Suresh Chunder Wum Chowdhry v. Jugut Chunder Deb*(3).

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

JUDGMENT:—It is admitted that the property sold was the property of the mother, and was therefore liable for her debts. After her death, her husband (defendant No. 2) and plaintiffs Nos. 1 and 2 were brought in as her legal representatives. The decree was executed and the property sold. Plaintiffs Nos. 1 and 2 were treated as majors in the application under s. 234 of the Code of Civil Procedure, and no guardian *ad litem* was formally appointed for them, but defendant No. 2 was in fact allowed to resist the execution proceedings as their guardian. The want of a formal order appointing him guardian is not fatal. *Suresh Chunder Wum Chowdhry v. Jugut Chunder Deb* and *Hari v. Narayan* (4).

Plaintiffs Nos. 3 and 4 were minors under the protection of their father, defendant No. 2. The property left by the mother was in his possession, and s. 234 only requires a legal representative to be brought in for the purpose of following property which has come into his hands. This is not a similar case to *Ramasami v. Bagirathi* in which no legal representative had been brought in and the sale was therefore set aside.

(1) I.L.R., 11 Bom., 727.

(2) I.L.R., 6 Mad., 180.

(3) I.L.R., 14 Cal., 204.

(4) I.L.R., 12 Bom., 427.

KUNHAMMAD  
v.  
KUTTL.

We must allow the appeal, reverse the decree of the Lower Appellate Court, and restore that of the Court of first instance. The appellants will be entitled to their costs in this and in the Lower Appellate Court.

---

## APPELLATE CRIMINAL.

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

QUEEN-EMPRESS

against

ACHUTHA.\*

1888.  
Oct. 22.

*Criminal-Procedure Code, s. 45—Duty to report sudden death—Owner of house distinguished from owner of land.*

Under s. 45 of the Code of Criminal Procedure, every owner or occupier of land is bound to report the occurrence therein of any sudden death.

The head of a Nayar family was convicted and fined under s. 176 of the Penal Code for not reporting a sudden death in the family house :

*Held*, following former decisions of the Court, that the conviction was illegal, because s. 45 of the Code of Criminal Procedure does not apply to the owner of a house.

CASE referred under s. 438 of the Code of Criminal Procedure by J. W. F. Dumergue, Acting District Magistrate of Malabar, as follows :—

“In this case the accused, a karnavan (senior member) of a Nayar tarwad, has been convicted and fined Rs. 3 under s. 176 of the Indian Penal Code for omitting to give information touching the death of his anandravan (junior member) from the effects of a snake-bite.

“The facts are identical with those dealt with in High Court Proceedings, No. 1225, dated 31st July 1880, pages 60 and 61 of the Weir’s Code, third edition, and the conviction appears accordingly illegal.

“I do not think that s. 45 of the Code of Criminal Procedure was intended to be applied to such cases as this, but with regard

---

\* Criminal Revision Case No. 469 of 1888.