

UKKU  
v.  
KUTTI.

As regards the memorandum of objections it is argued that the suit should have been dismissed and that the decree passed by the Judge is bad in law. But the decree passed appears to us to be just and proper. It gives effect to the right of pre-emption and in case of this right not being exercised within a given time allows redemption. In *Vasudevan v. Kesharan*(1) this point was raised and considered.

We also disallow the objections with costs.

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## APPELLATE CIVIL.

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

CHATHAPPAN (COUNTER-PETITIONER), APPELLANT,

v.

PYDEL (PETITIONER), RESPONDENT.\*

1891.  
April 6.

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*Civil Procedure Code, ss. 13, 206—Res judicata—Amendment of decree—  
Subsequent execution.*

In a suit for money against the karnavan and two anandravans of a Malabar tarwad, the judgment directed a "decree for the plaintiffs as prayed," but the decree ordered payment by one anandravan only. Property of the tarwad was attached and sold. The decree was then amended and brought into conformity with the judgment. Other members of the tarwad sought to have the sale set aside, but it was found that the judgment debt had been contracted for proper tarwad purposes, and that suit was dismissed. Application was now made for the attachment of other property of the tarwad in further execution of the amended decree:

*Held*, that the members of the tarwad were not entitled to contend that the decree was not binding on them that matter being *res judicata*.

*Quære*:—Whether the rule in *Sundara v. Subbanna*(2) as to the amendment of decrees is correct.

APPEAL against the order of J. P. Fiddian, Acting District Judge of North Malabar, on civil miscellaneous petition No. 536 of 1889, reversing the order of A. Chatu Nambiar, District Munsif of Nadapuram, on miscellaneous petition No. 1272 of 1889.

The facts of the case are stated above sufficiently for the purposes of this report.

The petitioner before the District Munsif was the decree-holder and he applied for the attachment and sale of property of the

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(1) I.L.R., 7 Mad., 309.

\* Appeal against appellate order No. 26 of 1890.

(2) I.L.R., 9 Mad., 354.

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judgment-debtor's tarwad in execution of his decree. The District Munsif dismissed the application after referring to *Varanakot Narayanan Namburi v. Varanakot Narayanan Namburi*(1), *Parvathi v. Kamaran*(2), *Gopalan v. Valia Tamburatti*(3), *Muhammad Sulaiman Khan v. Muhammad Yar Khan*(4).

The District Judge reversed the order of the District Munsif on the authority of *Sundara v. Subbanna*(5) and granted the application of the decree-holder.

The counter-petitioner preferred this appeal.

*Sankara Menon*, for the appellant, pointed out that the ruling referred to by the District Judge had been dissented from in *Muhammad Sulaiman Khan v. Muhammad Yar Khan*(4) and cited *Arunachellathudayan v. Veludayan*(6), *Chowdhry Wahid Ali v. Mullick Inayat Ali*(7), *Ram Charan Bysak v. Laxhi Kant Bannik*(8), and especially observations of Mitter J., at page 714 of the report. *Ristokinker Ghose Roy v. Burrodacaunt Singh Roy*(9), *Noor Ali Chowdhuri v. Koni Meah*(10), *Bhanushankar Gopalram v. Raghunathram Mangalram*(11), *Dawlat and Jagjivan v. Bhukandas Manekchand*(12).

*Sankaran Nayar* for respondent.

JUDGMENT.—The question whether the decree, as amended, is binding on the appellant, was decided in the affirmative as between them and the decree-holder in *Pydel v. Chathappan*(13). The matter is, therefore, *res judicata*, as it is the same decree which is now under execution, though the property attached is different. The decision, *Parthasaradi v. Chinnakrishna*(14), does not apply. It has been further argued that the decree amended was not the final decree passed in original suit No. 162 of 1878, and the decree of the Appellate Court was the one which should have been amended. We are referred to several decided cases in support of this contention, and especially to the decision, *Muhammad Sulaiman Khan v. Muhammad Yar Khan*(4), in which the decision in *Sundara v. Subbanna*(5) was dissented from.

(1) I.L.R., 2 Mad., 328.

(3) I.L.R., 7 Mad., 387.

(5) I.L.R., 9 Mad., 354.

(7) 6 B.L.R., 52.

(9) 10 B.L.R., 101; s.c. 14 M.L., 465.

(11) 2 Bom., H.C.R., A.C., 101.

(13) I.L.R., 14 Mad., 150.

(2) I.L.R., 6 Mad., 341.

(4) I.L.R., 11 All., 267.

(6) 5 M.H.C.R., 215.

(8) 7 B.L.R., 704.

(10) I.L.R., 13 Cal., 13.

(12) I.L.R., 11 Bom., 172.

(14) I.L.R., 5 Mad., 304.

Were the question not *res judicata* for the purposes of the execution of the amended decree we should have been inclined to refer to the Full Bench the question of the correctness of the ruling in *Sundara v. Subbanna*(1).

We must dismiss the appeal, but under the circumstances we will make no order as to costs in this Court.

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## ORIGINAL CIVIL,

*Before Mr. Justice Wilkinson.*

AZIMULLA SAHEB (PLAINTIFF),

*v.*

SECRETARY OF STATE FOR INDIA (DEFENDANT).\*

1892.  
March 16.

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*Costs of Government Solicitor—Taxation of, against unsuccessful litigant.*

The Government Solicitor, who receives a monthly salary as such, receives no further payment from Government in respect of any costs of litigation to which Government is a party, except "out fees" or actual payments made by him on behalf of Government, and pays no fees when he instructs the Advocate-General; but, under his arrangement with Government, he is entitled to retain the costs decreed to Government, if recovered, and he then pays to the Advocate-General the fees of counsel allowed by the taxing officer :

*Held*, that when a suit against Government is dismissed with costs, costs should be taxed in the usual way, and the taxing officer cannot enquire into the arrangement as to remuneration of its law officers by Government.

APPLICATION for review of the taxation of the defendant's costs in reference to certain items which had been allowed by the taxing officer in civil suit No. 128 of 1891. That was a suit brought by the plaintiff against the Secretary of State for India in Council in which a decree had been passed whereby it was dismissed with costs. The items in question related to the fees of the Advocate-General who appeared, and the costs of the Government Solicitor who acted for the Secretary of State.

Mr. Norton for the plaintiff.

The principle which we contend for is this :—That where Government is represented by the Government Solicitor, Government is entitled to recover no costs in case the other side is unsuccessful,

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(1) I.L.R., 9 Mad., 354.

\* Civil Suit No. 128 of 1891.