

unable to rule that the first instalment was paid in conformity with the direction contained in the decree.

The payment was not certified by Appaji Chetti to have been received by him on behalf of both judgment-creditors, and it appears that he has applied the whole of the money for his own use. Having regard to section 231 of the Code of Civil Procedure, a payment made out of Court to one of several joint creditors, and not certified by him as having been received or applied for the benefit of all, cannot be regarded as made in satisfaction of the decree, except for the purpose of determining what order should be passed under section 231.

The District Judge should, therefore, ascertain what is the share due to Appaji Chetti, and, giving credit for the amount thus ascertained, execute the decree in favour of Savalayammal for the balance.

If Appaji Chetti's share should exceed Rs. 1,100, the District Judge will, of course, make such order as may be necessary to protect his interest as regards such excess.

The costs incurred hitherto to abide and follow the result.

SULTAN
MOIDDEEN
v.
SAVALAY-
AMMAL.

APPELLATE CIVIL.

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

KELU (PLAINTIFF), APPELLANT,

v.

VIKRISHA AND ANOTHER (DEFENDANTS), RESPONDENTS.*

1891.
April 6.
September 9.

Civil Procedure Code, ss. 223, 295—Execution—Rateable distribution—Transfer of decrees for execution.

Two decrees were passed against the same defendant in the Court of a District Munsif and on the small cause side of a Subordinate Court in the same district, respectively. The holder of the decree in the small cause suit attached and brought to sale the judgment-debtor's interest in a benefit fund. The other decree-holder applied for rateable distribution, his decree having been transferred for execution to the Subordinate Court directly and not through the District Court:

Held, (1) that the direct transfer of the decree of the District Munsif was not illegal;

* Appeal against Order No. 11 of 1890.

KELU
v.
VIKRISHA.

(2) that the Subordinate Judge had inherent jurisdiction to execute the decree of the District Munsif ;

(3) that the order for rateable distribution was right.

APPEAL against the order of E. K. Krishnan, Subordinate Judge of South Malabar, made on civil miscellaneous petition No. 1397 of 1889.

Govinda Menon obtained a money-decree in original suit No. 310 of 1889 in the Court of the District Munsif of Shernad, and Kelu Menon obtained a money-decree against the same defendant in small cause suit No. 154 of 1889 in the Court of the Subordinate Judge at Calicut and attached and brought to sale, in execution, the defendant's interest in a benefit fund. Govinda Menon's decree had meanwhile been transferred to the Subordinate Court directly without the intervention of the District Court, and he applied for rateable distribution under Civil Procedure Code, s. 295.

The Subordinate Judge granted the application for rateable distribution.

The decree-holder in the small cause suit preferred this appeal.

Sankara Menon for appellant.

Govinda Menon for respondent.

JUDGMENT.—The second respondent obtained a money-decree against first respondent in original suit No. 310 of 1888 on the file of the Shernad Munsif. Appellant also obtained a decree for money against first respondent on the small cause side of the Subordinate Court at Calicut in small cause No. 154 of 1889. In its execution, appellant attached the judgment-debtor's interest in certain kuri or benefit fund, brought it to sale, and realized Rs. 488. Meanwhile second respondent had his decree transmitted to the Subordinate Judge for execution, and then applied for rateable distribution under section 295 of the Code of Civil Procedure. Appellant objected to this proceeding on three grounds, viz., (i) that the decree in second respondent's favour was collusive ; (ii) that it was not transmitted to the Subordinate Judge for execution through the District Court ; (iii) that the decree, being one passed in a regular suit, was not capable of being executed on the small cause side of the Subordinate Court. The Subordinate Judge disallowed these objections and ordered rateable distribution. To this order three objections are taken. It is argued that a District Munsif is not at liberty to transmit his decree to a Subordinate Judge for execution otherwise than through the District Court.

In the case before us both Courts are in the same district, and the last paragraph of section 223 is conclusive on this point. Another contention is that a decree passed by a District Munsif in the exercise of ordinary jurisdiction is not capable of being executed by a Subordinate Judge executing a decree passed by him in the exercise of his small cause jurisdiction. If both decrees were passed by the same Court, one on its regular and the other on its small cause side, there is no warrant in the language of section 295 for the suggestion that they cannot be admitted to rateable distribution. The intention is to recognize the equal right of holders of decrees for money to share in the sale-proceeds realized by any one of them in execution, provided that the others have, prior to the realization, applied to the Court for execution. There is no apparent reason why a distinction should be made between one who holds a small cause decree and one who obtains a decree on the regular side. In this connection our attention is drawn to the decisions in *Gokul Kristo Chunder v. Aukhil Chunder Chatterjee*(1) and *Durga Charan Majumdar v. Umatarra Gupta*(2), wherein the decision in *Narasayya v. Venkatakrishnayya*(3) was dissented from. In the last-mentioned decision, a Divisional Bench of this Court held that chapter XIX created an extraordinary jurisdiction in cases mentioned in the last paragraph of section 223, and that a District Munsif was at liberty to execute, and that a District Judge was competent to transfer to him for execution, a decree for a sum in excess of the pecuniary limit of the ordinary jurisdiction of the former. But two Divisional Benches of the High Court at Calcutta considered that there was no intention to create an exceptional jurisdiction in District Munsifs to execute decrees for more than the value of their pecuniary jurisdiction, and that section 223 ought to be read as if section 6 was incorporated with it. It is not necessary to determine, for the purposes of this case, whether the District Munsif has jurisdiction to execute a decree passed by a Subordinate or District Court for more than Rs. 2,500; but it is sufficient to observe that the Subordinate Judge had inherent jurisdiction to execute the decree for money passed by the District Munsif of Shernad. We dismiss the appeal with costs.

The civil revision petition is also dismissed.

(1) I.L.R., 16 Cal., 457. (2) I.L.R., 16 Cal., 465. (3) I.L.R., 7 Mad., 397.