

As to the question whether the suit is *res judicata* by the decision in original suit No. 12 of 1887, it is to be observed that the object of that suit was merely to get a declaration that the will was not genuine. The property was not then sued for and it cannot be said that plaintiff ought in that suit to have questioned the validity of the will in case of its being found to be genuine.

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I concur, therefore, in setting aside the Lower Court's decree and remanding the suit for disposal according to law.

The costs hitherto incurred will be provided for in the decree to be passed by the Lower Court.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

SULTAN MOIDEEN (DEFENDANT No. 2), APPELLANT,

v.

SAVALAYAMMAL AND ANOTHER (PLAINTIFF AND DEFENDANT
No. 1), RESPONDENTS.*

1891.
April 16.
1892.
February 17.

*Civil Procedure Code, ss. 231, 258—Joint decree—Execution, application for—
Uncertified payment to one decree-holder.*

One of two holders of a joint decree applied for execution of the decree to the full amount. It appeared that the other decree-holder had received a certain sum from the judgment-debtor on account of the decree out of Court, but this payment had not been certified :

Held, that the payment was valid only to the extent of the share to which the payee was entitled, and that this share having been ascertained and credit given for it, the decree should be executed in favour of the present applicant for the balance.

APPEAL against the decree of T. Weir, District Judge of Salem, on execution petition No. 444 of 1890, in which Savalayammal, one of two joint decree-holders, prayed for the execution of the decree in original suit No. 13 of 1883 on the file of the District Court of Salem.

The decree, which was passed in the terms of a compromise, was to the effect that the defendant should pay to the plaintiffs (viz., the present petitioner and one Appaji Chetti) jointly Rs.

* Appeal against Order No. 33 of 1890.

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2,000 and interest in two instalments. The present application was for the execution of the decree for the full amount, and it was resisted on the ground, among others, that the defendant had paid out of Court Rs. 1,100 under the decree to Appaji Chetti. It appeared that no satisfaction of the decree had been certified.

The District Judge made an order as prayed. The judgment-debtor preferred this appeal.

S. Subramanya Ayyar for appellant.

Mr. E. Norton for respondents.

SHEPARD, J.—If the payment actually was made to Appaji Chetti, I think the decree cannot now be executed, at any rate, as to the half share to which he was presumably entitled. I must ask the District Judge to find distinctly whether in fact the payment was made.

The finding will be returned within one month after the reopening of the Court after the recess, and seven days, after the posting of the finding in this Court, will be allowed for filing objections.

In compliance with the above order, the Acting District Judge submitted his finding, which was to the effect that that the Rs. 1,100 were paid by the judgment-debtor Sultan Moideen Ravuthan to one of the judgment-creditors, Appaji Chetti.

This appeal having come on again for disposal, it was referred to a bench of two Judges. It subsequently came on for disposal before MUTTUSAMI AYYAR and BEST, JJ.

Sundara Ayyar for appellant.

Mr. E. Norton for respondents.

JUDGMENT.—The finding is that the sum of Rs. 1,100 was paid by the defendant to Appaji Chetti, one of two decree-holders. This finding is, however, not sufficient for the disposal of the case. A further finding is also necessary as to what was the share to which Appaji Chetti is entitled as between him and the first plaintiff Savalayammal. The payment made to Appaji Chetti can be held valid only to the extent of his share to which he is entitled:—See *Tarruck Chunder Bhattacharjee v. Divendro Nath Sanyal*(1), with the decision in which case we agree.

As to the contention that the application made by Savalayammal for execution of the whole decree was premature, we are

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.