

SUBHARAYA
v.
KYLASA.

be recognized. For these reasons we are of opinion that the judgment of the District Judge must be reversed, and the suit remanded for trial. Costs to abide event.

APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Subramanya Ayyar.

BAIRAGULU AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

BAPANNA (DEFENDANT), RESPONDENT.*

Civil Procedure Code, ss. 244, 258—Suit for declaration of satisfaction of a decree—Satisfaction of decree out of Court.

A judgment-debtor, alleging that he had entered into an agreement with the decree-holder in satisfaction of his decree, and that the latter had, in breach of such agreement, procured the issue of a warrant of attachment, now sued for a declaration that the decree had been satisfied, and prayed also for the cancellation of the warrant of attachment :

Held, that the suit was not maintainable.

SECOND APPEAL against the decree of C. Ramachandra Ayyar, Acting District Judge of Nellore, in appeal suit No. 267 of 1889, affirming the decree of V. Subramanya Ayyar, District Munsif of Ongole, in original suit No. 111 of 1889.

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

The plaintiff preferred this second appeal.

Seshagiri Ayyar for appellants.

Ramachandra Rau Sahib for respondent.

JUDGMENT.—The suit has been dismissed on the ground that the matter in question, viz., the satisfaction of the decree is a matter which should be dealt with by the Court in execution of the decree, and not by a separate suit.

It is clear that it is of this nature.

The effect of section 258 of the Civil Procedure Code is only to exclude proof of an uncertified agreement in execution proceedings. It does not limit the operation of section 244. The

* Second Appeal No. 816 of 1891.

case of *Virarayhava v. Subbakka*(1) is cited by the appellants' pleader. This case shows that an action for the breach of the contract to certify adjustment of the decree may be brought; but, it is not authority for the position that a suit to declare that a decree has been satisfied will lie. The appeal is dismissed with costs.

PAIRAGULI
v.
BAPANNA.

APPELLATE CIVIL.

Before Mr. Justice Parker and Mr. Justice Subramanya Ayyar.

JAGANATHA (PLAINTIFF), APPELLANT,

v.

GANGI REDDI AND OTHERS (DEFENDANTS), RESPONDENTS.*

1892.
January 18.

Evidence Act—Act I of 1872, s. 115—Estoppel—Execution-purchaser without notice of mortgage.

The plaintiff sued to realise his security under a mortgage executed to him by defendant No. 1, by sale of the mortgage premises which were in the possession of defendants Nos. 2 and 3. It appeared that the plaintiff had previously attached and brought to sale the mortgage premises in execution of a decree against defendant No. 1, and that the other defendants had purchased at the Court sale, without notice of the plaintiff's mortgage, which was not referred to in the attachment lists or sale certificates:

Held, that the plaintiff was estopped from setting up his present claim.

SECOND APPEAL against the decree of O. Wolfe Murray, Acting District Judge of North Arcot, in appeal suit No. 139 of 1890, affirming the decree of S. Subba Rau, District Munsif of Chittur, in original suit No. 372 of 1889.

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

The District Munsif dismissed the suit and his decree was affirmed on appeal by the District Judge.

The plaintiff preferred this second appeal.

Rama Rau for appellant.

Parthasaradhi Ayyangar for respondents.

JUDGMENT.—We think the plaintiff is estopped from recovering on the mortgage when he has allowed the auction purchaser to

(1) I.L.R., 5 Mad., 397.

* Second Appeal No. 477 of 1891.