

Procedure. *The parties to this proceeding were the plaintiff and the representatives of the defendant in suit, and the question whether the sale is valid is a question whether a proceeding had in execution should be set aside and falls under section 244. This was the ground on which the case of *Viraraghava v. Venkata*(1) was decided. As pointed out in that case the contention that it is an accident, that the purchaser is also a party to the suit, and, therefore, he is not a party within the meaning of section 244 is clearly not tenable, the intention being to prevent, as far as possible, one suit growing out of another and to render all questions between the parties to the suit and relating to the execution, discharge or the satisfaction of the decree liable to be dealt with in execution. It is then said that the matter which may be inquired into must be taken to be restricted to irregularities mentioned in section 311, but we cannot accede to this contention. The ground on which the sale was sought to be set aside in *Viraraghava v. Venkata*(1) was fraud. If the proceeding sought to be set aside is one which relates to execution, and if the contest as to its validity is between the parties to the suit, the specific ground on which the proceeding is impeached is not material within the meaning of section 244.

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The appeal fails and is dismissed.

APPELLATE CIVIL.

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

RAMAN (PLAINTIFF), APPELLANT,

v.

SRIDHARAN AND ANOTHER (DEFENDANTS), RESPONDENTS.*

16
December.

Civil Procedure Code—Act XIV of 1882, s. 43—Res judicata—Decree against three of four uralars of a devasom—Suit to declare the decree binding on the fourth.

The holder of a bond executed by two uralars of a Malabar devasom obtained a decree, declaring the devasom property was liable for the secured debt, against the executants of the bond and one other uralan: the fourth uralan intervened in execution of the decree, and objected that the devasom property was not liable

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to be attached. His objection was upheld, and the plaintiff now brought a suit against him for a declaration that the debt was binding on him and on the devasom property:

Held, that the suit was not barred under Civil Procedure Code, s. 43.

SECOND APPEAL against the decree of E. K. Krishnan, Subordinate Judge of South Malabar, in appeal suit No. 177 of 1891, reversing the decree of B. Cammaran Nair, District Munsif of Chowghat, in original suit No. 520 of 1890.

In 1886 two of the four uralars of a Malabar devasom executed a bond for Rs. 721 in favor of the present plaintiff. In 1889 the plaintiff sued three of the uralars and obtained a decree on the bond, which declared the property of the devasom to be liable for the amount. In execution of that decree devasom properties were attached and the fourth uralan intervened under section 278 of the Civil Procedure Code. His objection was upheld, and this suit was now brought for a declaration that the judgment-debt was binding on the devasom and upon the uralan who was not a party to the previous suit.

* The District Munsif held that the action was maintainable and he passed a decree for the plaintiff. The Subordinate Judge reversed this decree, holding that the suit was barred by Civil Procedure Code, s. 43.

The plaintiff preferred this second appeal.

Sankaran Nayar for appellant.

Sundara Ayyar for respondent No. 2.

JUDGMENT.—The only point for consideration in this appeal is whether the suit is barred by ~~section 43 of the Code of Civil Procedure~~. We are of opinion that it is not, for the reasons stated in *Nobin Chandra Roy v. Magantara Dassya*(1).

We set aside the decree and remand the appeal for disposal according to law.

The costs will abide and follow the result.

(1) I.L.R., 10 Cal., 924 at pp. 928-9.