

APPELLATE CIVIL.

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

1893.
April 19.

LAKSHMI AMMAH (PLAINTIFF No. 3), APPELLANT,

v.

PONNASSA MENON AND OTHERS (DEFENDANTS NOS. 1 TO 15),
RESPONDENTS.*

Code of Civil Procedure—Act XIV of 1882, ss. 231, 244—Order of a Court on application for execution by one or more joint decree-holders—Appeal therefrom.

An appeal lies from an order under section 231 of the Code of Civil Procedure, such an order being one relating to the execution of a decree within the meaning of section 244. *Gooroo Doss Roy v. Ram Ruginee Dossia*(1) and *Odhoya Pershad v. Mahadeo Dutt Bhandaree*(2) distinguished

APPEAL under section 15 of the Letters Patent from the order of Subramania Ayyar, J., dated 4th January 1892, passed on appeal against appellate order No. 10 of 1891, confirming the order of A. Thompson, District Judge of South Malabar, dated 2nd August 1890, passed in civil miscellaneous appeal No. 214 of 1890.

The facts of the case appear sufficiently for the purpose of this report from the judgment of the High Court.

Sankaran Nayar for appellant.

Respondents were not represented.

JUDGMENT.—We are of opinion that from an order under section 231 of the Code of Civil Procedure, being an order relating to the execution of a decree between the parties to the decree within the meaning of section 244 of the same Code, an appeal lies. If all the joint decree-holders apply for execution, there can be no doubt that the order passed on such application, whether refusing or granting it, will be appealable. Section 231 provides for the case in which all the decree-holders are unable or are unwilling to join in the application, and in such case enables one or more of such decree-holders to apply for execution of the whole decree, and then the Court is authorized to impose such terms as are necessary for the protection of the interests of the other decree-holders. This appears to us to disclose an intention to provide

* Letters Patent Appeal No. 32 of 1892. (1) 17 W.R., 136. (2) 17 W.R., 415.

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facility for executing decrees even when all the decree-holders are unable or unwilling to join in applying for execution. It is no doubt true that the Court has discretion to refuse execution for sufficient cause; but that is no reason for holding such order to be other than an order relating to the execution of the decree within the meaning of section 244. In *Gooroo Doss Roy v. Ram Ruginée Dossia*(1), which was followed in *Odhoya Pershad v. Mahadeo Dutt Bhandaree*(2), the question was not between the decree-holder on one side and the judgment-debtor on the other, but merely between two of the joint decree-holders. With reference to the learned Judge's observation, we find that there has been no contest as between the decree-holders, but only an allegation that some of them had come to terms with the judgment-debtor.

We set aside the order of the learned Judge and of the lower appellate Court, and remand the case to the District Judge for replacement on the file and disposal on the merits, so far as the order of the District Munsif cancels the previous order in favour of third plaintiff.

The costs in this Court and the District Court will abide and follow the result.

APPELLATE CIVIL.

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

LAKSHMINARAYANAPPA (DEFENDANT No. 3), APPELLANT,

v.

VENKATARATNAM AND OTHERS (PLAINTIFFS AND DEFENDANTS

Nos. 1, 4 AND 5), RESPONDENTS.*

1893.
March 2.
April 18.

Limitation Act—Act XV of 1877, sch. II, art. 124—Suit for having the appointment of a karnam declared void.

A suit by existing karnams for having the appointment of another person as a karnam jointly with themselves declared void does not fall within the provision of article 124 of the Limitation Act.

SECOND APPEAL against the decree of G. T. Mackenzie, District Judge of Kistna, in appeal suit No. 545 of 1891, confirming the

(1) 17 W.R., 136.

(2) 17 W.R., 415.

* Second Appeal No. 757 of 1892.