

has not cited any such authority. It was held in *Dunput Sing Bahadoor v. Rance Rajesuree*(1) in that property in the possession of others than the legal representative might be taken in execution of a decree; but it was so held with reference to the language of section 210 of the Code of 1859, which allowed of execution being taken either against the legal representative or the estate of the deceased judgment-debtor. But in section 234 of the present code the words 'against the estate of the deceased debtor' are not to be found, and execution is allowed only against the legal representative and "to the extent of the property of the deceased which has come to his hands and has not been duly disposed of."

CHITRA-  
KELAN  
v.  
GOVINDA  
KARUMBAR.

We do not think that the words legal representative can be taken to include any person who does not in law represent the estate of the deceased. The wording of section 234 seems to point to the intention that a stranger in possession of property who was not a party to the decree ought not to be proceeded against in execution or otherwise than by a regular suit.

We must set aside the orders of the Courts below with costs throughout.

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## APPELLATE CIVIL.

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

KRISHNAYA NAVADA AND OTHERS (PLAINTIFFS), APPELLANTS,

1893.  
September 18.

v.

PANCHU AND OTHERS (DEFENDANTS), RESPONDENTS. \*

*Code of Civil Procedure—Act XIV of 1882, ss. 562, 566 and 582—Order made  
on appeal to amend plaint.*

On appeal from the decision of a District Munsif in favour of the plaintiffs, in a suit for the recovery of rent, the District Judge set aside the decree of the Lower Court, ordered a new trial, and directed the amendment of the plaint by inserting the exact boundaries of the land on which the plaintiffs claimed the rent:

(1) 15 W. B., 476.

\* Appeal against Order No. 117 of 1892.

KRISHNAYA  
NAVADA  
".  
PANCHU.

*Held*, that the order for amendment of the plaint was bad under s. 562 of the Code of Civil Procedure, since the original Court had not "disposed of the suit "upon a preliminary point," and that it was likewise bad under s. 582, since there had been no dispute as to the boundaries of the land before the original Court. If the information was necessary, the District Judge should have sent down an issue on the point for trial under s. 566 of the code.

APPEAL against the order of W. C. Holmes, Acting District Judge of South Canara, in appeal suit No. 233 of 1891, reversing the decree of U. Babu Row, District Munsif of Udipi, in original suit No. 387 of 1888.

On appeal against the decree of the District Munsif in a suit for recovery of rent given in favour of the plaintiffs, the District Judge, having set aside the decree and ordered a new trial, directed the amendment of the plaint by the insertion of the exact boundaries of the land on which the plaintiffs claimed rent, a point on which there had been no dispute in the Lower Court.

The plaintiffs preferred this appeal.

*Pattabhirama Ayyar* for appellants.

The respondents were not represented.

JUDGMENT.—If the order is an order under section 562 of the Code of Civil Procedure, as contended for by appellants, it is clearly bad, as the original Court had not disposed of the suit on a preliminary point. The course the Judge should have adopted in order to ascertain the boundaries of the plaint land, if that information was necessary, was to have sent down an issue on the point for trial under section 566 of the code.

It is however contended on the other side that the order was one merely for the amendment of the plaint in the matter of boundaries and was passed under section 582 of the code as an order that should have been passed by the original Court. But the answer is that there was no dispute as to the boundaries of the land before the original Court, and, therefore, that that Court could have had no ground for returning the plaint for amendment. We are of opinion that this fact takes the case out of the purview of section 582 even if that section is at all applicable. It follows that the remand must have been under section 562, and as such it was an illegal order. \*We, therefore, reverse it and direct the Judge to dispose of the appeal on its merits.