

## APPELLATE CIVIL.

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

CHATHAKELAN (PETITIONER), APPELLANT,

v.

GOVINDA KARUMIAR (COUNTER-PETITIONER), RESPONDENT.\*

1893.  
November 16.

*Code of Civil Procedure—Act XIV of 1892, s. 234—A stranger to a decree against a deceased person in possession of his property—‘ Legal representative.’*

The words ‘ legal representative ’ in s. 234 of the Code of Civil Procedure do not include any person who does not in law represent the estate of the deceased person. Consequently, a stranger in possession of property of a deceased person who was not a party to a decree against such person cannot be proceeded against in execution otherwise than by a regular suit.

APPEAL against the order of R. S. Benson, District Judge of South Malabar, in civil miscellaneous appeal No. 17 of 1892, confirming the order of V. Ramasastri, District Munsif of Palghat, in miscellaneous petitions Nos. 380 and 2325 of 1891.

The petitioner in this case had obtained a decree for money against one Edathara Valaya since deceased, and now sought to enforce the decree to the extent of Rs. 170 against his successor in stanam, the counter-petitioner, who had collected the said money for the Malikhana due to his predecessor. Both the Lower Courts decreed in favour of the petitioner, the District Judge holding that, although “ the term ‘ legal representative ’ in section 234, “ Civil Procedure Code, is not defined, there is authority for holding that in the absence, as in this case, of any claim by the next-of-kin, the words ‘ legal representative ’ will include, for the “ purposes of this section, the person who has taken possession of “ the property of the deceased.”

*Sankaran Nayar* for appellant.

*Desika Chariar* for respondent.

JUDGMENT.—Though the Judge says there is authority for holding that the words ‘ legal representative ’ in section 234 of the Code of Civil Procedure include any person who has taken possession of the property of the deceased judgment-debtor, he

\* Appeal against Appellate Order No. 51 of 1892.

has not cited any such authority. It was held in *Dunput Sing Bahadur 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."

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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.