

APPELLATE CIVIL.

Before Mr. Justice Parker.

1894.
November
15, 19.

MUTHUSAMI AYYAR (PLAINTIFF), APPELLANT,

v.

NATESA AYYAR AND OTHERS (DEFENDANTS, NOS. 2, 3, 10 AND 16),
RESPONDENTS.*

Civil Procedure Code—Act XIV of 1882, s. 231—Application for partial execution of a decree.

A decree provided that the plaintiff should pay Rs. 304 for the costs of thirteen out of eighteen defendants. Two of the defendants now sought to execute the decree in respect of their proportionate share of the sum so awarded. Besides the plaintiff, two only of the other defendants were joined as parties to these proceedings:

Held, that the application was not maintainable and should be dismissed.

APPEAL against the order of J. P. Fiddian, Acting District Judge of Trichinopoly, on execution petition No. 178 of 1892.

The applicants were defendants Nos. 2 and 3 in original suit No. 50 of 1891, and they applied in execution to recover their share of the sum decreed to be paid by the plaintiff for the costs of these and certain others of the defendants. The other parties to these petitions were the plaintiff and defendants Nos. 10 and 16. The other defendants entitled to share in the costs awarded by the decree were not parties to these proceedings.

The District Judge ordered execution to be issued for Rs. 134 part of the sum claimed.

The plaintiff preferred this appeal.

Pattabhirama Ayyar for appellant.

Seshagiri Ayyar for respondents.

JUDGMENT.—The decree in original suit No. 50 of 1891 allowed one set of costs and vakil's fee (Rs. 304-6-3) to defendants Nos. 1-3 and 10-18, and this is an application by defendants Nos. 2 and 3 to execute for Rs. 152-2-0, which, they say, is their share of the vakil's fee. The application is resisted by defendants Nos. 10 and 16, who say that they have received the sum (Rs. 304-6-3) from plaintiff, and that the decree is satisfied and satisfaction recorded.

The District Judge stated that satisfaction of the decree had not been recorded, and all that had been done was to record the

* Appeal against Order No. 125 of 1893.

petition of defendants Nos. 10 and 16. Refusing to recognize the alleged payment by plaintiff to defendants Nos. 10 and 16, he allowed defendants Nos. 2 and 3 to obtain fractional execution for Rs. 134, which he held to be their share.

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Plaintiff appeals.

In support of the contention that defendants Nos. 2 and 3 are entitled to execute for their fractional share, I am referred to *Tarruck Chunder Bhuttacharjee v. Divendro Nath Sanyal*(1) and *Sultan Moideen v. Savalayammal*(2). On the other side *Kuthath Haji v. Bavotti Haji*(3) is referred to.

Section 231, Civil Procedure Code, is the only provision which enables one of several joint decree-holders to execute a decree without the rest joining in the application, and all that it enables him with the leave of the Court to do, is to apply to execute the whole decree for the benefit of them all. The Court can pass such order as is necessary for the protection of the interests of those who have not joined. In the two cases quoted—*Tarruck Chunder Bhuttacharjee v. Divendro Nath Sanyal*(1) and *Sultan Moideen v. Savalayammal*(2)—the application was to execute the whole decree. These two cases are authority for the proposition that if payment has been made out of Court to one of the joint decree-holders for the benefit of them all, the Court will recognize the payment and record satisfaction to the extent of that decree-holder's share, allowing the applicants to execute for the balance only.

In this case defendants Nos. 2 and 3 do not admit that any payment has been made out of Court. Had they applied for execution of the whole decree it might have been open to the Judge to determine what proportion of the amount was due to defendants Nos. 10 and 16 and record satisfaction of that amount, allowing petitioners to execute for the balance. But the decree does not award any specific sum as due to defendants Nos. 2 and 3, and it must be executed as a joint decree or not at all.

On this ground it appears to me that the order of the Judge allowing fractional execution was wrong.

The order must be set aside and the execution petition dismissed with costs.

(1) I.L.R., 9 Calc., 831.

(2) I.L.R., 15 Mad., 343.

(3) I.L.R.; 3 Mad., 79.