

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Boddam.

PUTHIANDI MAMMED (PLAINTIFF), PETITIONER,

v.

AVALIL MOIDIN (DEFENDANT), COUNTER-PETITIONER.*

1896.
November 13.

Transfer of decree—Subsequent attachment in execution against transferer.

A transferred a decree to B who recovered part of the amount due under it and was prevented from recovering the rest by an attachment of the decree in execution proceedings against A:

Held, that A was liable to pay compensation to B.

PETITION under Small Cause Courts Act, section 25, praying the High Court to revise the proceedings of S. Subbayar, Subordinate Judge of North Malabar, in Small Cause suit No. 417 of 1895.

Suit to recover Rs. 100 and interest. The decree in Small Cause suit No. 1300 of 1890, which was passed in favour of present defendant, was assigned by him to the plaintiff. The plaintiff recovered a portion of the decree amount, but failed to recover the rest because the decree, of which the assignment had not been completed by the recognition of the court, was attached in execution of a decree against the defendant. The plaintiff sued to recover the amount which he had failed to realise.

The Subordinate Judge was of opinion that the plaintiff's failure to recover the rest of the money payable under the decree was the result of his own laches in failing to adopt the procedure prescribed by Civil Procedure Code, section 232, and that the defendant accordingly was not liable to pay damages. He distinguished *Krishnan v. Sankara Varma*(1) and dismissed the suit.

The plaintiff preferred this petition.

Mr. *Krishnan* for petitioner.

Ryu Nambiar for counter-petitioner.

JUDGMENT.—All that the plaintiff got in law for the money he paid to the defendant for the transfer of his decree was an agreement to transfer it, not a complete transfer until recognised by the court. The completion of the transfer in this case was

* Civil Revision Petition No. 851 of 1895.

(1) I.L.R., 9 Mad., 441.

POTHIANDI
MAMMED
v.
AVAILIL
MOLDIN.*

prevented by the attachment of the decree for the defendant's debts, and it was the defendant's duty to do all that was necessary to complete the transfer by removing the obstacle, the attachment. This he did not do and made it impossible for the transfer to the plaintiff to be completed by the recognition of the court.

In these circumstances the plaintiff was entitled to succeed in his action. We must set aside the decree of the Subordinate Judge and decree the claim with costs and interest at 6 per cent. thereon from the date of plaint till date of payment.*

The petitioner is entitled to his costs in this court.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Davies.

MUTHU AYYAR (PURCHASER), PETITIONER,

v.

RAMASAMI SASTRIAL AND ANOTHER, COUNTER-PETITIONERS.*

*Civil Procedure Code—Act XIV of 1882, s. 310-A (a)—Application to set aside sale—
Deposit by judgment-debtor of the amount of debt—Poundage money.*

A judgment-debtor, whose land had been sold in execution, is entitled to have the sale set aside under Civil Procedure Code, section 310-A (a), if he deposits 5 per cent. of the purchase money including that deducted by the court for poundage and fulfils the requirements of clause (b) even though something more on account of the poundage was recoverable from him under the head of costs.

PETITION under Civil Procedure Code, section 622, praying the High Court to revise the proceedings of N. Sambasiva Ayyar, District Munsif of Thuvadi, on miscellaneous petition No. 840 of 1895.

The petitioner, who was the judgment-debtor in original suit No. 164 of 1893, preferred the above application under section 310-A (a) of the Civil Procedure Code applying that the sale of certain immovable property which had taken place in execution of that decree be set aside, on his depositing the amount specified in the proclamation of sale together with 5 per cent. on the purchase money. The purchaser objected saying, as was stated in the

* Civil Revision Petition No. 190 of 1896.