

APPELLATE CIVIL.

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

ANNA PILLAI (PETITIONER), APPELLANT,

v.

THANGATHAMMAL (COUNTER-PETITIONER), RESPONDENT.*

Transfer of Property Act—Act IV of 1882, ss. 88, 99—Form of decree.

In November 1882 a decree was passed on a hypothecation bond for the payment of the secured debt and it contained the following words:—"the property hypothecated in the bond being also held liable for the whole amount thus awarded":

Held, that the decree was in reality a decree for sale and could be executed as such.

APPEAL against the order of P. Narayanasami Ayyar, Subordinate Judge of Negapatam, on civil miscellaneous petition No. 606 of 1895, which was an application for the dismissal of a petition for execution preferred by the decree-holder in original suit No. 32 of 1882.

The decree in question was in the following terms:—

"Claim for the recovery of Rs. 5,679-11-0 due under the bond A executed to the plaintiff by the first and second defendants and Amirthanatham Pillai, the deceased father of the third, fourth and fifth defendants, hypothecating the immovable property specified in the bond on the 25th September 1877, the principal being repayable on the 25th September 1881 and the interest once a year.

"This cause coming on on the 15th November 1882 for final disposal before M.R.Ry. R. Vasudeva Rau Avergal, Subordinate Judge, in the presence of Mr. G. T. Oliver, wakil on the part of the plaintiff, and of A. Kannoosami Pillai, wakil on the part of the defendants, this Court doth order and decree that plaintiff do get from first and second defendants the sum sued for with costs and further interest at 6 per cent. per annum until payment on the principal from the date of the suit and on the costs from the present date, the property hypothecated in the bond A being also held liable for the whole amount thus awarded, and the Court doth further order and decree that the defendants do bear their costs."

* Appeal against Order No. 61 of 1896.

The decree-holder objected that the boundaries of the land in question were not sufficiently specified either in the decree or in the mortgage, and that the decree, not having been made in accordance with the Transfer of Property Act, gave the decree-holder no right to have the property sold and could not be executed.

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The Subordinate Judge dismissed the application and permitted execution to proceed.

The petitioner preferred this appeal.

The memorandum of appeal comprised, among others, the following paragraphs:—

“The suit having been brought after the coming into operation of the Transfer of Property Act, the decree herein in the form in which it has been passed cannot be executed by attachment and sale of the mortgaged properties.

“Under section 99 of the Transfer of Property Act the property cannot be sold, unless the suit had been brought under section 67 and the decree be passed under section 88 of the Act.”

Tiagaraja Ayyar for appellant.

Respondent did not appear.

JUDGMENT.—The decree was not so formal as it should have been under the Transfer of Property Act. This is no doubt due to the fact that that Act had only just come into force at the time when the decree was passed. The decree is in reality a decree for sale. There is nothing to show that the property to be sold is not liable to the debt.

The appeal is dismissed under section 551, Code of Civil Procedure.

APPELLATE CRIMINAL.

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

QUEEN-EMPRESS

v.

NANJUNDA RAU.*

1896.
October 29.

Penal Code, s. 211—False charge of dacoity made to a police station-house officer.

A false charge of dacoity was made to a Police Station-house officer, who, after some investigation, referred it to the magistrate as false, and the magistrate