

ABDUL  
RAHIMAN  
v.  
MAHOMED  
KASSIM.

APPEAL against the order of W. J. Tate, District Judge of Salem, in Appeal No. 161 of 1894, which was preferred against the order of J. M. Nallasami Pillai, District Munsif of Tiruppattur, made on execution petition No. 161 of 1894.

The petitioner was the judgment-debtor in Original Suit No. 681 of 1888, and he applied under sections 337 and 337 (a) for an order directing his release and staying the execution of the decree, pending a second appeal which had been preferred to the High Court. The District Munsif made an order directing the applicant's release under Civil Procedure Code, section 337 (a). The decree-holder appealed to the District Judge, who held that no appeal lay.

The decree-holder preferred this appeal to the High Court.

*Seshagiri Ayyar* for appellant.

*Sivasami Ayyar* for respondent.

JUDGMENT.—Though the order of the District Munsif was passed under the authority given to him by section 337 (a), Civil Procedure Code, yet it was none the less an order in a question arising between the parties to the suit and relating to the execution of the decree so as to fall within section 244 (c), Civil Procedure Code. Such order is a decree under section 2 of the Code, and is therefore open to appeal.

We must, therefore, set aside the order of the District Judge, and remand the appeal for disposal on the merits. Costs will abide and follow the order of the Lower Appellate Court.

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## APPELLATE CIVIL.

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

BOJJAMMA (PLAINTIFF No. 2), APPELLANT,

v.

VENKATARAMAYYA AND OTHERS (DEFENDANTS), RESPONDENTS.\*

*Negotiable instrument—Benami transaction—Right of benamidar to sue.*

The payee and holder of a promissory note is not debarred from suing on it by reason of the fact that a third person is really interested in it.

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\* Second Appeal No. 490 of 1896.

SECOND APPEAL against the decree of W. G. Underwood, District Judge of Cuddapah, in Appeal Suit No. 24 of 1895, affirming the decree of V. G. Narayana Ayyar, District Munsif of Cuddapah, in Original Suit No. 603 of 1893.

BOJJAMMA  
 v.  
 VENKATA-  
 RAMAYYA.

This was a suit on a promissory note executed by defendant No. 1 to plaintiff No. 1 for Rs. 448, dated 14th November 1890. The plaintiff stated that the money was advanced by one Chin-tapalli Kristnavadhanulu, though the note was in his name.

Both the Courts dismissed the suit.

Plaintiff No. 2 appealed.

*Subramania Ayyar* for appellant.

*Etiraja Mudaliyar* for respondents.

JUDGMENT.—It is not quite clear that this really was a benami transaction; but, assuming that it is we do not think that the payee and holder of a promissory note is debarred from suing on it by reason of the fact that a third person is really interested in it. No doubt it has been often held in suits relating to land that a benamidar is not competent to sue in his own name. But there is a great distinction between cases of that sort and the case of negotiable instruments. The distinction between suits relating to immovable property and suits on contracts appears to be recognized by the Privy Council (*Gopeerkrist Gosain v. Gungapersaud Gosain*(1) and *Hari Gobind Adhikari v. Akhoy Kumar Mosumdar*(2)). In the case of negotiable instruments especially it would be most mischievous in our opinion to hold that the holder and payee of an instrument may be put to proof as to whether the money advanced was his own. We can find no reported authority in favour of the plea now suggested. We entirely disagree with the unreported decision in *Ganapati Naicken v. Saminatha Pillai*(3).

We must reverse the decrees of the Courts below and the plaintiff must have a decree against the first defendant as prayed with costs throughout.

(1) 6 M.I.A., 72.

(2) I.L.R., 16 Cal., 364.

(3) Civil Revision Petition No. 578 of 1895 unreported.