

The decision of the Privy Council in *Muhammad Nawaz Khan v. Alam Khan*(1) is not at variance with the above view. We think that the contrary view taken in *Mana Vikrama v. Kristnan Nambudri*(2) is erroneous.

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MUDALI  
v.  
MANDI  
SUNDARA  
MUDALI.

Our answer to the reference made to us is (1) that the order of the District Munsif refusing to file the award and setting it aside is a decree, and (2) that an appeal lay against that decree.

The appeal came on for final hearing in due course before Sir Subrahmania Ayyar, Offg. C.J., and Boddam, J., when the Court delivered the following

JUDGMENT.—Following the ruling of the Full Bench, we reverse the order of the learned Chief Justice on the ground that an appeal lay and no revision petition could be heard.

Each party will bear his own costs in the revision petition as well as in this appeal.

## APPELLATE CIVIL—FULL BENCH.

*Before Mr. Justice Benson, Mr. Justice Bhashyam Ayyangar  
and Mr. Justice Russell.*

SIVAGAMI ACHI (DEFENDANT No. 7—SEVENTH COUNTER-  
PETITIONER), APPELLANT,

v.

SUBRAHMANIA AYYAR (PLAINTIFF), PETITIONER,  
RESPONDENT.\*

1903,  
October 30.  
November  
16.

*Civil Procedure Code—Act XIV of 1882, s. 287—Proceedings relating to proclamation of sale—"Order"—Appeal.*

None of the proceedings of a Court under section 287 of the Code of Civil Procedure and the rules framed thereunder in relation to the proclamation of sale is an "order" within section 244 and as such appealable as a "decree."

*Sivasami Naicker v. Ratnasami Naicker*, (I.L.R., 23 Mad., 568), and *Ganga Prosad v. Raj Coomar Singh*, (I.L.R., 30 Calc., 617), dissented from.

(1) I.L.R., 18 Calc., 414.

(2) I.L.R., 3 Mad., 68.

\* Civil Miscellaneous Appeal No. 117 of 1903, presented against the order of P. J. Itfeyerah, Subordinate Judge of Kumbakonam, in Execution Petition Register No. 215 of 1902 (Original Suit No. 40 of 1900).

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Proceedings under section 287 are in themselves administrative and not judicial, but if and when a sale does take place, and it has to be judicially confirmed, objections may be taken to the confirmation of the sale on any of the grounds mentioned in section 311 of the Code, some of which may relate to the contents of the proclamation.

QUESTION referred to a Full Bench. The case came first before Boddam and Bhashyam Ayyangar, JJ., who made the following

ORDER OF REFERENCE TO A FULL BENCH.—This appeal relates to the settlement of the proclamation of sale made by the Court to carry out an order absolute for sale of property ordered to be sold under a mortgage decree. The grounds of appeal taken are as to the estimated market value of the property set out, the place where the sale is to take place, the lots in which it is to be sold and the amount for the recovery of which the property is to be sold. A preliminary objection is taken that no appeal lies against the proceedings of the Court under section 287, Civil Procedure Code, and the rules of the High Court framed thereunder, and that such proceedings are not orders within the meaning of section 244, Civil Procedure Code, as the expression "order" is defined in the Code.

We are disposed to think that the preliminary objection is well founded and that under section 287, Civil Procedure Code, the proceedings are in themselves administrative and not judicial, but that if and when a sale does take place, if ever, and it has to be judicially confirmed, objections may be taken to the confirmation of the sale on any of the grounds mentioned in section 311, Civil Procedure Code, some of which may relate to the contents of the proclamation. This view receives strong corroboration from the provision enacted by section 288, Civil Procedure Code, that no Judge or other public officer shall be answerable for any error, mis-statement or omission in any proclamation under section 287, Civil Procedure Code, unless the same has been committed or made dishonestly, a provision which, in view of Act XVIII of 1850, would have been quite superfluous if proceedings under section 287, Civil Procedure Code, were "judicial" and not "administrative."

Against an order confirming or refusing to confirm a sale there is a right of first appeal under section 588, Civil Procedure Code, and no second appeal can lie, but if proceedings under section 287, Civil Procedure Code, are regarded as orders passed under section 244, Civil Procedure Code, relating to proceedings in execution between parties to the suit, there will be not only a first appeal but

also a second appeal. In support of the right of appeal *Sivasami Naickar v. Ratnasami Naickar*(1) and *Ganga Prosad v. Raj Coomar Singh*(2) are relied on by the vakil for the appellant, but we doubt whether in those cases the above considerations were urged before the Courts and whether in deciding them it was intended to decide that the proceedings of the Court under section 287, Civil Procedure Code, and the rules framed thereunder were orders within the meaning of section 244, Civil Procedure Code.

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In these circumstances we refer for the opinion of a Full Bench the following question:—

“Whether all or any of the proceedings of a Court passed under section 287, Civil Procedure Code, and the rules made thereunder in relation to the proclamation of sale are an ‘order’ within section 244, Civil Procedure Code, and as such appealable as a decree.”

The case came on for hearing before the Full Bench constituted as above.

*K. Balamukunda Ayyar* for appellant.

*C. R. Tiruvenkatachariar* for respondent.

The Court expressed the following

OPINION.—Our answer to the reference is that in our opinion none of the proceedings of a Court under section 287, Civil Procedure Code, and the rules framed thereunder in relation to the proclamation of sale is an “order” within section 244 and as such appealable as a “decree.”

We concur in the reasons given in the Order of Reference, and we may add that the view that the proceedings in themselves, under section 287, are of an administrative and not a judicial character is further supported by the fact that special provision is made in section 287, to summon witnesses and make enquiry into the matters referred to in the section, a provision which would be superfluous if the proceedings were judicial. We are therefore constrained to dissent from the decisions in the cases of *Sivasami Naickar v. Ratnasami Naickar*(1) and *Ganga Prosad v. Raj Coomar Singh*(2).

To allow an appeal, and, as a consequence, a second appeal, in regard to proceedings under section 287 as if they were orders made under section 244, and therefore decrees, would enormously increase the difficulties and delays which even now occur in obtaining

(1) I.L.R., 23 Mad., 568.

(2) I.L.R., 30 Cal., 617.

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the execution of decrees, and that without any counterbalancing advantages. For if the sale is eventually held, and a material irregularity in publishing or conducting it is proved and loss has thereby been caused to the objector he can get the sale set aside; whereas even if there has been an irregularity but no loss has resulted it is contrary to the policy of the Code (section 311) to interfere with the sale.

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## APPELLATE CIVIL.

*Before Sir S. Subrahmania Ayyar, Officiating Chief Justice,  
and Mr. Justice Bhashyam Ayyangar.*

1903.  
November  
3, 4, 5, 13.

KOCHERLAKOTA VENKATAKRISTNA ROW (DEFENDANT),  
APPELLANT,

v.

VADREVVU VENKAPPA AND ANOTIBER (PLAINTIFFS), RESPONDENTS.\*

*Limitation Act—XV of 1877, s. 28, sched. II, art. 142—Suit between third parties—  
Delivery of present defendant's land in execution—Present defendant not a party—  
Knowledge of delivery—Acquiescence—Failure to apply for reinstatement—  
Dispossession for more than twelve years—Extinction of title.*

The title to a piece of land was (apparently) vested in defendant prior to 1877, and defendant, till then (apparently) had possession of the land. In 1867, a suit was brought by the father of the present first plaintiff against a third party for the recovery of land. The present defendant was not a party to that suit. In 1874, in execution of the decree in that suit, passed in favour of the plaintiff therein, the Subordinate Court appointed a Commissioner to make a local investigation and submit a report showing the land to be delivered to the plaintiff therein. The Commissioner personally inspected the land, and, in his report, mentioned that the present defendant, though not a party to that suit, raised the objection that the boundaries fixed by the Commissioner of the land to be delivered to the plaintiff therein included land belonging to the present defendant. The report was considered by the Subordinate Judge, but the present defendant apparently did not appear before him, and the Subordinate Judge heard the parties to that suit and confirmed the plan prepared by the Commissioner and ordered delivery to be given to the plaintiff in that suit of the land shown in the plan. That order was modified by the District Court, and in 1877, a warrant of delivery was issued by the District Judge to the Nazir, directing him to deliver possession of the property to the plaintiff therein and to eject the person in enjoyment of the land if he should refuse to quit. This

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\* Appeal No. 148 of 1901, presented against such portion of the decree of J. H. Munro, District Judge of Godavari, in Original Suit No. 33 of 1899.