

The other question argued before us on behalf of the appellant is that execution should proceed only against the widow who alone is the legal representative of the first defendant, and that execution cannot proceed against the fifth defendant even if he be in possession of any portion of the first defendant's assets that was his separate property.

VEERAPPA
CHETTIAR
v.
RAMASWAMI
AIYAR.

We think that this contention is well founded. The name of the fifth defendant should be struck off the record and execution should be granted under section 234 against the widow as the legal representative of the deceased first defendant. If the latter has left any separate property the same may be attached, even in the hands of the fifth defendant, just as it might be attached if it were found in the hands of any stranger.

In the result we allow the appeal with costs and setting aside the order of the District Judge we direct him to restore the petition to his file and to dispose of it afresh according to law.

APPELLATE CIVIL.

Before Mr. Justice Subrahmania Ayyar and Mr. Justice Davies.

MAHARAJA OF JEYPORE (APPELLANT), PETITIONER,

v.

SRI NILADEVI PATTAMAHADEVI AND ANOTHER (RESPONDENTS),
RESPONDENTS.*

1902.
November 28,
December
9, 10, 17.

Vizagapatam Agency Rules—Rule XXXI—Right to petition Government—Rule of a substantive character—Revision in execution proceedings.

Rule XXXI of the Agency Rules for the District of Vizagapatam is of a substantive character and provides for revision in execution and other petitions in regard to which no right of appeal has been given.

Rule XXXI is not *ultra vires*.

EXECUTION Petition, filed in the Court of the Agent to the Governor, Vizagapatam. An order was passed on the petition by the Acting Senior Assistant Agent, against which the petitioner

* Civil Miscellaneous Petition No. 792 of 1900 under rule 31 of the Agency Rules for Vizagapatam District praying in the circumstances stated therein for review of the judgment of W. O. Horne, Agent to the Governor at Vizagapatam, dated 5th April 1900, in Miscellaneous Appeal No. 1 of 1900, presented against the proceedings of W. Lys, the Senior Assistant Agent at Vizagapatam, dated 22nd December 1899, in the matter of Civil Miscellaneous Petition No. 10 of 1899.

MAHARAJA OF
JEYPORE
v.
SRI
NILADEVI
PATTAMAHA-
DEVI.

appealed to the Agent, who confirmed the order. The petitioner now presented this Civil Miscellaneous Petition, under Rule 20 of the Agency Rules for the District of Vizagapatam.

V. Krishnaswami Ayyar and C. R. Tiruvenkatu Chariar for petitioner.

P. R. Sundara Ayyar for respondents.

JUDGMENT.—Objection was taken on behalf of the respondents that Rule XXXI of the Vizagapatam Agency Rules gave no general right of petitioning the Government, but only prescribed the channel through which petitions that were otherwise provided for should pass. If this view were correct, the rule would have been quite unnecessary, as at the time it was enacted there were no cases in which petitions were otherwise provided for. The cases to which our attention has been drawn were provided for subsequently to the passing of Rule XXXI. Rule XXXI must therefore have been intended to provide for cases for which no previous provision has been made, such as petitions relating, like this, to matters in execution of decrees, for which no appeal was allowed. It is unlikely that the Government should have overlooked the necessity for providing for revision by them of the orders of the Agent and his assistants in the very important subject of execution of decrees when several rules have been made regarding the subject, and the control of Government in the matter is expressly reserved in one instance (see rule XXII). The provision in the rule XXXI that the petition thereunder received may be referred to certain authorities, shows that the rule was one of a substantive character and not merely to provide for the formality to be observed in the submission of the petition. Our view is the same as that taken in *Chakrapani v. Varahamma*(1).

It was next contended that if the rule was what we consider it to be, it was *ultra vires* inasmuch as it was in excess of the powers conferred upon the Government by section 4 of Act 24 of 1839 under which the rules were made. We are unable to agree with the contention that it was not competent for the Governor in Council, acting under that section, to reserve any control in himself over the Agents and their subordinates in the exercise of their judicial powers. The words "to determine in what suits an appeal shall lie to the Sadar Adawlat" should not be understood

as restricting the Government from making rules for the control of the Agents and their subordinates otherwise than by appeal to the Sadar Adawlat, and the words "to determine to what extent the decisions of the Agents in Civil Suits shall be final" have been held, in *Maharajah of Jeypore v. Jammunadhora*(1) not to disable the Government from making the decisions of the Agents subject to review under the orders of the Sadar Adawlat, as provided in Rule XX, although no appeal is provided for. We consider that the words "to prescribe such rules as he may deem proper for the guidance of such agents, etc.," are wide enough to warrant the Governor in Council to reserve to himself a power of control such as he gives himself under Rule XXXI. Under the Act, the operation of the ordinary laws within the Agency Tracts was excluded, and the control of the administration of Justice was virtually vested in the Governor in Council, as is implied from the provision empowering him to make such rules in that respect as he deems proper, without any limitation to his powers. The designation of the officer in whom the actual administration of Justice was vested in the Act, namely "the Agent to the Governor" shows that the Legislature itself recognized his subordination to the Governor, leaving it to the Governor to define and explain the extent of such subordination by Rules. As in our opinion the Rule XXXI was *intra vires* the question whether it was validated under the Indian Councils Act 24 and 25 Vict., Chap. 67, Section 25, does not arise.

MAHARAJA OF
JEYPORE
P.
SRI
NILADEVI
PATTAMAHA-
DEVI.

It was further urged that the order was not that of the Agent but of his Assistant, and so Rule XXXI was inapplicable, but we find that the order was passed under the authority of the Agent as is expressly stated therein.

Coming to the merits, we must take it that the Agent's order refusing to attach and sell the property in execution of the decree was not passed in the exercise of his discretionary power under the concluding part of clause 2 of Rule XXXI but because the Agent considered the property was not liable to be proceeded against in execution of the decree. The Agent relied on a provision of the Civil Procedure Code which does not apply to the Agency Tracts. The property sought to be attached, viz., the interest of the defendant in the land, even assuming it was a grant for her maintenance

(1) I.L.R., 24 Mad., 345.

MAHARAJA OF
JEYPORE
v.
SRI
NILADEVI
PATTAMAIA-
DEVI.

is not exempted from attachment under the provision to clause 2 of Rule XXXI, by which alone the Agent was bound. He should therefore have granted execution unless the application for execution was barred by limitation. This, the Agent held, was not the case with reference to the only contention before him, that it had become barred subsequent to August 1896. Though the correctness of this view could not be impeached, the respondent's vakil wanted to show that the execution of the decree had become barred previous to 1896. As this point was not raised before the Agent, and no satisfactory explanation was forthcoming why it had not then been raised, we must decline to allow the question of limitation to be re-opened in the manner suggested. We must therefore reverse the order in question and direct that the application for execution be restored to the file and proceeded with in due course. The petitioner's costs in this Court should be paid by the respondent.

APPELLATE CIVIL.

Before Mr. Justice Subrahmania Ayyar and Mr. Justice Davies.

PERUMALLA SATYANARAYANA (PETITIONER), APPELLANT,

v.

PERUMALLA VENKATA RANGAYYA (COUNTER-PETITIONER),
RESPONDENT.*

Civil Procedure Code—Act XIV of 1882, ss. 523, 365—Agreement for arbitration filed in Court—Death of one of the parties—Application by legal representative to be brought on record.

Where matters in difference have been submitted to arbitration, the submission is, under the law in force in British India, not revocable without just and sufficient cause, even where the submission has not been made a rule of Court. And where the submission has been made a rule of Court and has become the subject of a suit, it can only be revoked by leave of the Court upon good cause being shown. The policy of the Indian Legislaturo has been not to follow the English common law with regard to references to arbitration. Such contracts are not revocable, in India, at the will of either party, nor will the authority of an arbitrator necessarily be revoked by the death of one of the parties to

* Civil Miscellaneous Appeal No. 139 of 1902, presented against the order of F. H. Hamnett, District Judge of Górávari, dated 11th July 1902, and passed on Civil Miscellaneous Petition No. 144 of 1902 in Original Suit No. 18 of 1901.