

ABDULLA
SAHIB
v.
DOCTOR
OOSMAN
SAHIB.

treated as an application to execute a decree which directs the sale of that property. As pointed out in *Jogemaya Dassi v. Thackomoni Dassi*(1), the properties attached being mortgaged properties could not be brought to sale under the attachment and the attachment must therefore be treated as ineffective and infructuous. It is only the present application for sale that can be treated as an application to execute the decree and it is made after 12 years.

The appeal must therefore be allowed, the order of the lower Court reversed and the application for sale dismissed with costs.

APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice
Subrahmania Ayyar.*

MATURI SUBBAYYA (PLAINTIFF), APPELLANT,

v.

KOTA KRISHNAYYA (DEFENDANT), RESPONDENT.*

1904,
September
22.
October 31.

Civil Procedure Code—Act XIV of 1882—Suit for the determination of any right to or interest in immoveable property—Suit for the recovery of purchase money under contract for the sale of land—Jurisdiction.

A suit for the recovery of unpaid purchase money under a contract for the sale of land is a suit "for the determination of any right to or interest in immoveable property" within the meaning of section 16, clause (d) of the Code of Civil Procedure.

John Young v. Mangalapilly Ramaiya, (3 M.H.C.R., 125), and *His Highness Shrimant Maharaj Yashwant Ray Holkar v. Dadabhai Cursetji Ashburner*, (I.L.R., 14 Bom., 353), referred to and distinguished.

THIS was an appeal against the order of the District Court of Kistna, against the decree of the District Munsif of Masulipatam.

The facts material to the case are fully set out in the judgment.

Dr. S. Swaminadhan and T. Ramachandra Rau for appellant.

E. Venkataramasarma for respondent.

(1) I.L.R., 24 Calc., 473 at p. 480.

* Civil Miscellaneous Appeal No. 71 of 1904, presented against the order of V. Venugopal Chetty, Esq., Acting District Judge of Kistna, in Appeal Suit No. 222 of 1903, presented against the decree of M.R.Ry. S. Ramaswami Ayyar, District Munsif of Masulipatam, in Original Suit No. 111 of 1902.

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JUDGMENT.—In this case the plaintiff brought a suit in the Court of the District Munsif of Masulipatam for the purchase money alleged to be due to him by the defendant under a contract for the sale of land. The contract was entered into, and the defendant resides, within the jurisdiction of the District Munsif of Masulipatam. The land is situate within the jurisdiction of the District Munsif of Gudivada. In his plaint the plaintiff alleges he is ready and willing to execute a conveyance in accordance with the contract of sale. The defence is, in effect, a false representation on the part of the plaintiff as to the extent of the land sold. The District Munsif of Masulipatam held that he had jurisdiction to try the suit. The District Judge held that he had no jurisdiction and ordered that the plaint should be returned for presentation to the proper Court. The question for determination is whether a suit for the recovery of unpaid purchase money under a contract for the sale of land is a suit “for the determination of any other right to, or interest in immoveable property” within the meaning of section 16 (d) of the Code of Civil Procedure. In the case of *John Young v. Mangalapilly Ramaiya*(1), it was no doubt held by this Court that an action could be brought for the purchase money under a contract for the sale of land in the Court within the jurisdiction of which the contract was entered into, notwithstanding that the land was situate outside the jurisdiction. The enactment in force at the time this case was decided was section 5 of Act VIII of 1859. The language of that enactment was not “suits for the determination of any other right to or interest in immoveable property” as in the present Code but “suits for land or other immoveable property”. Section 16 of the present Code after referring in (a), (b) and (c) to certain classes of suits relating to land, refers in (d) in general terms, to suits for the determination of any other right to, or interest in land. We do not think the case referred to can be regarded as an authority on the construction of section 16 (d) of the Code now in force. The cases of *His Highness Shrimant Maharaj Yashwantray Holkar v. Dadabhai Cursetji Ashburner*(2) and *Land Mortgage Bank v. Sudurudeen Ahmed*(3) where it was held that the High Court had jurisdiction to try a suit for specific

(1) 3 M.H.C.R., 125.

(2) I.L.R., 14 Bom., 858.

(3) I.L.R., 19 Calc., 352.

performance of a contract entered into within the local limits of the original jurisdiction, the land being outside the jurisdiction, were decisions under article 12 of the Letters Patent, the language of the article being the same as that of section 5 of the Act of 1859, viz., "suits for land or other immoveable property". The present case does not fall within the proviso to section 16, since it is clear that the land sold is not held by the defendant and it cannot be said that it is held by the plaintiff on his behalf. We are of opinion that the suit is one which comes within section 16 (d) of the Code. The appeal is dismissed with costs.

MATURI
SUBBAYYA
v.
KOTA
KRISHNAYYA.

APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice
Subrahmania Ayyar.*

KULAIKADA PILLAI AND ANOTHER (DEFENDANTS NOS. 1 AND 2),
APPELLANTS,

1904.
November
3, 8, 28.

v.

VISWANATHA PILLAI AND ANOTHER (THIRD DEFENDANT
AND PLAINTIFF), RESPONDENTS.*

*Civil Procedure Code—Act XIV of 1882, ss. 544, 561—Practice—Appeal—Appeal
by one defendant making co-defendants and plaintiffs party respondents—
No appeal or memorandum of objections filed by plaintiff—Relief granted
to plaintiff-respondent in decree of Appellate Court—Appellate Court—
Procedure—Jurisdiction.*

Where a respondent to an appeal fails to give the notice required by section 561 of the Code of Civil Procedure, it is not open to the Appellate Court to grant any relief to that respondent, in a case, where the granting of such relief is not necessarily incidental to the relief granted to a party who has appealed.

*Soiru Padmanabh Rangappa v. Narayan Rao Bin Vithal Rao, (I.L.R., 18
Bom., 520), distinguished.*

Hudson v. Basdeo Bajpaye, (I.L.R., 26 Calc., 109), referred to.

*Rup Jann Bibee v. Abdool Kadir Bhuyan, (I.L.R., 31 Calc., 643), referred
to and commented on.*

* Second Appeal No. 1376 of 1902, presented against the decree of M.R.Ry. S. Doraisamy Ayyangar, Subordinate Judge of Tinnevely, in Appeal Suit No. 309 of 1901, presented against the decree of M.R.Ry. P. S. Seshia Ayyar, District Munsif of Srivaikuntam, in Original Suit No. 491 of 1900.