

## APPELLATE CIVIL.

*Before Mr. Justice Subrahmaniam Ayyar and  
Mr. Justice Sankaran Nair.*

1904.  
July 28.

PASUPATHY AYYAR (FOURTH DEFENDANT), APPELLANT,

v.

KOTHIANDA RAMA AYYAR (PLAINTIFF), RESPONDENT.\*

*Civil Procedure Code—Act XIV of 1882, ss. 232, 244—Transferee decree-holder—Mesne profits and costs not included in transfer—Suit to enforce right under transfer—Maintainability—Plaint treated as application in execution.*

A decree had been passed against the present defendant in a previous suit for the surrender of possession of certain lands and also for mesne profits and costs. The interest of the decree-holders in these lands was then sold in execution of a decree which had been passed against them, and was purchased by the present plaintiff. The present plaintiff applied for execution of the original decree and to be placed in possession of the property he had purchased. The petition was rejected, and he now sued to obtain possession of the properties he had purchased. On the question being raised whether the suit was barred by section 244 of the Code of Civil Procedure:

*Held*, that plaintiff was entitled to relief. He was not a transferee of all that had been decreed in the original suit, inasmuch as the right to mesne profits and costs had not passed to him. If, for that reason, he was not entitled to be recognized as the transferee of the decree, and to execute it as such, he was entitled to enforce his right by suit. Assuming, however, that no separate suit lay, and that he should have proceeded by way of execution, the case was one in which the plaint should be treated as an application for execution.

*Sataput Roy v. Syed Ali Hossein*, (24 W.R., 11), referred to.

SUIT for possession of lands with mesne profits and costs. A decree was passed in Original Suit No. 238 of 1895 against the present fourth defendant for the surrender of possession of certain lands and also for mesne profits and costs. The interest of the decree-holders in these lands was sold in execution of a decree in Small Cause No. 145 of 1896 against them and purchased by the present plaintiff. Plaintiff then applied for the execution of the decree in Original Suit No. 238 of 1895 and to be placed in possession of the property he had purchased. That application was rejected. He now brought this suit. Further facts are set

\* Second Appeal No. 264 of 1903, presented against the decree of F. D. P. Oldfield, Esq., District Judge of Tanjore, in Appeal Suit No. 101 of 1902, presented against the decree of M.R.Ry. K. Krishnamachari, District Munsif of Valingaman, in Original Suit No. 474 of 1900.

out in the judgment of the High Court. The District Munsif decreed in plaintiff's favour. The Acting District Judge upheld that decree.

PASUPATHY  
 AYYAR  
 v.  
 KOTHANDA  
 RAMA  
 AYYAR.

Fourth defendant preferred this second appeal.

*R. Subrahmania Ayyar* for appellant.

*V. Visvanadha Sastri* for respondent.

JUDGMENT.—The facts of the present case are these. A decree was passed in Original Suit No. 238 of 1895 against the appellant for the surrender of possession of certain lands and also for mesne profits and costs. The interest of the decree-holders in these lands was sold in execution of a decree in Small Cause No. 145 of 1896 against them and purchased by the respondent before us.

The respondent then applied for the execution of the decree in Original Suit No. 238 of 1895 and to be placed in possession of the property he had purchased as he had "come into the shoes of the plaintiff and thus become entitled to be recognised as transferee under section 232, Civil Procedure Code." His claim to execute the decree was not recognised and the application was rejected by the District Munsif.

He now brings the suit in the same District Munsif's Court, to obtain possession of the properties he had purchased and the question that has been raised by this appeal is whether his suit is barred by section 244, Civil Procedure Code, and therefore ought to be dismissed.

It is now found that the lands, the right to which passed to the respondent by the sale, are the identical lands which the appellant was directed to surrender in Original Suit No. 238 of 1895 and if he were entitled to execute the decree as a transferee under section 232, Civil Procedure Code, it would be a question whether a separate suit to recover them would lie; though he may be entitled to bring a declaratory suit to establish his right as transferee when there is a dispute as to the same. Here, however, he was not a transferee of all that was decreed, the right to mesne profits and costs not having passed to him. It is pointed out in *Sutaput Roy v. Syed Ali Hossein*(1), cited for the respondent, with reference to section 208 of Act VIII of 1859, that a person who acquires only a partial interest in the rights created by the decree is not entitled to be recognised as the transferee of the decree under section 232,

PASUPATHY  
 AYYAR  
 v.  
 KOTHANDA  
 RAMA  
 AYYAR.

Civil Procedure Code. If this view is correct the respondent, as a person not entitled to execute the decree, must be held entitled to enforce his right in the subject matter of the decree in so far as he is interested, by a separate suit.

Assuming, however, that no separate suit will lie, but that the respondent should have proceeded in execution only, the present case seems to us eminently one in which his plaint should be treated as an application for execution, following the view adopted in *Biru Mahata v. Shyama Churu Khawas*(1) and *Jhanman Lal v. Kewal Ram*(2).

For, soon after the sale to him, the respondent applied, as already stated, in due form for delivery of possession of the lands, and that was refused by the District Munsif by an order which was, having directed him to seek possession in the small cause suit in which the sale took place, obviously wrong. Within a few days after that order this suit was instituted in the same Court which had jurisdiction to execute the decree. The appellant in contesting the suit raised various questions which had to be gone into, whether the relief was to be granted in a suit or in execution and these contentions have been all found against him, so that there are no merits whatsoever in favour of the appellant nor any laches on the part of the respondent. The obstacles in the way of the respondent obtaining possession of the lands have arisen either from the error of the Court which was bound to execute the decree or untenable objections raised by the appellant. And as the plaint was presented within the period of limitation prescribed for applications to execute the decree and the contest continuously carried on, it would be absolutely unjust to deprive the respondent of the fruits of the purchase on the mere technical ground raised by the appellant.

We therefore dismiss the second appeal with costs.

---

(1) I.L.R., 22 Calc., 483.

(2) I.L.R., 22 All., 121.