

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Moore.

1905.
November 2.

KRISHNAN (MINOR) BY HIS NEXT FRIEND PATHMA PARVATHI
AMMAL (COUNTER-PETITIONER), APPELLANT,

v.

VENKATAPATHI CHETTY (PETITIONER), RESPONDENT.*

Civil Procedure Code—Act XIV of 1882, ss. 244, 246—Person attaching decree representative of decree-holder under s. 244—Decree directing sale of property for money due is a decree for money within the meaning of s. 246.

One who attaches a decree is a representative of the decree-holder for the purposes of section 244 of the Code of Civil Procedure and an appeal lies from orders in execution proceedings disposing of questions arising between him and the judgment-debtor, relating to the execution of the decree.

Sah Man Mull v. Kanagasabapathi, (I.L.R., 16 Mad., 20), followed.

A decree directing the plaintiff to recover the decreed amount by sale of properties but not directing payment by the defendant is essentially a decree for money. The provisions as to set off, in section 246 of the Code of Civil Procedure, will apply to such decrees.

Vaidhinathasamy Ayyar v. Somasundaram Pillai, (I.L.R., 28 Mad., 476), followed.

THIS appeal arose out of proceedings in execution of the decree in Original Suit No. 5 of 1900 on the file of the District Munsif of Kumbakonam, which directed that plaintiffs Nos. 1, 2 and 4 should recover by sale of lands in possession of the first defendant (appellant) the sum of Rs. 1,852 and costs. The first defendant obtained a decree against the original plaintiffs, in Original Suit No. 467 of 1901 in the same Court.

The respondent having attached the decree in Original Suit No. 5 of 1900 in execution of a decree he held against the plaintiffs, applied in the execution application under appeal for realisation of the whole decree amount in Original Suit No. 5 by sale of the properties directed to be sold by the decree. The first defendant objected, *inter alia*, on the ground that the sale should

* Civil Miscellaneous Second Appeal No. 99 of 1904, presented against the order of F. D. P. Oldfield, Esq., District Judge of Tanjore, in Civil Miscellaneous Appeal No. 478 of 1904, presented against the order of M. R. Ry. P. Narayana Chari, District Munsif of Kumbakonam, in Execution Petition No. 558 of 1903 (Original Suit No. 5 of 1900).

not be for the whole amount but that he should be allowed to set off against the amount decreed in Original Suit No. 5, the amount due to him under the decree in Original Suit No. 467.

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The District Munsif held, on the authority of *Mallikarjuna Sastri v. Narasimha Rao*(1), that, as the decree in Original Suit No. 5 did not direct payment of money but only ordered the sale of properties for money claimed, it was not a decree for money for the purpose of set off under section 246 of the Code of Civil Procedure. The first defendant appealed. Objection was taken by the respondent that the order of the Munsif was not appealable. The District Judge held that the attaching creditor did not obtain the position of the decree-holder for the purposes of section 244 of the Code of Civil Procedure, that therefore no appeal lay, and that the decree in Original Suit No. 5 was not a decree for money. He dismissed the appeal.

The first defendant appealed to the High Court. The respondent took the preliminary objection that no appeal lay.

O. R. Thiruvengkutachariar for appellant.

K. Ramachandra Ayyar for respondent.

JUDGMENT.—As regards the preliminary objection, we think that it must be overruled under the authority of the case of *Sah Man Mull v. Kanagasabapathi*(2) followed in *Pranal Annee v. Sreenevasa Mudali*(3).

On the merits, we think that the decree (in Original Suit No. 5 of 1900) which is attached is essentially a decree for money. The case of *Mallikarjuna Sastri v. Narasimha Rao*(1) relied on by the District Munsif has been recently overruled by the Full Bench in *Vaidhinathasamy Ayyar v. Somasundaram Pillai*(4). It is therefore open to the appellant to set off against the decree in Original Suit No. 5 of 1900 any decree for money which he holds against the decree-holder therein.

We must therefore set aside the order of the Courts below and remand the petition to the District Munsif for disposal according to law. Costs in this and in the lower Appellate Court will abide and follow the result.

(1) I.L.R., 24 Mad., 412.

(2) I.L.R., 16 Mad., 20.

(3) C.M.A. Nos. 152 to 156 of 1901 (unreported).

(4) I.L.R., 28 Mad., 473.