

APPELLATE CIVIL.

*Before Sir S. Subrahmania Ayyar, Officiating Chief Justice,
and Mr. Justice Sankaran Nair.*

SOMASUNDARAM PILLAI (DEFENDANT), APPELLANT,

v.

KRISHNASAMY NAIDU AND ANOTHER (PLAINTIFFS),
RESPONDENTS.*

1905.
August 17.

Civil Procedure Code—Act XI of 1882—One of two joint decree-holders recovering the whole amount liable to the other for his share.

Although a payment to one of two joint decree-holders of the whole decree amount does not, even when certified, absolve the judgment-debtor from liability to the other decree-holder, such decree-holder is not bound to proceed against the judgment-debtor in execution, but may sue to recover his share from the other decree-holder.

THE facts necessary for this report are set out in the judgment.

R. Kuppuswami Ayyar for appellant.

K. Ramachandra Ayyar for the Hon. Mr. P. S. Sivaswami Ayyar for respondents.

JUDGMENT.—We agree with the learned Judge that the plaintiffs' allegations entitle them to sue. The costs awarded by the decree were according to it payable to both the plaintiffs and the defendant.

The defendant received the whole amount from the judgment-debtor and certified to the Court the fact of such receipt. The circumstance that such certificate was not of itself binding upon the plaintiffs does not preclude them from recovering from the defendant so much of the amount as they are entitled to, if they elect to adopt such a course instead of proceeding against the judgment-debtor in execution.

This appeal is dismissed with costs.

* Appeal No. 1 of 1905 under section 15 of the Letters Patent, presented against the judgment of Mr. Justice BODDAM, in Civil Revision Petition No. 283 of 1904, preferred from Small Cause Suit No. 1280 of 1903 on the file of the Subordinate Judge's Court of Tanjore.