

on the mortgage bond and a decree obtained which was not a mere personal decree against the widow but one binding the estate which was liable to be sold for the decree amount. *Hari Saran Moitra v. Bhubaneswari Devi*(1) is also distinguishable, for there the property which was the subject-matter of the suit devolved by adoption upon the person who was held bound by the decree, though he had not been made formally a party to it.

Appeal Against Order No. 174 of 1907 is therefore allowed with costs throughout. Appeal Against Order No. 201 of 1907 is dismissed.

Messrs. *Branson and Branson*—Attorneys for appellants.

THE
ARBUTH-
NOT'S
INDUSTRIALS
(LTD.)
v.
MUTHU
CHETTIAR.

APPELLATE CIVIL.

Before Mr. Justice Wallis and Mr. Justice Munro.

MAHOMED KHAN BAHADUR (COUNTER-PETITIONER),
APPELLANT,

v.

MAHOMED MUNAWAR SAHIB (PETITIONER),
RESPONDENT.*

1908.
April 28.
May 5.

Civil Procedure Code—Act XIV of 1882, s. 258—Agreement discharging one of several defendants an adjustment and must be certified.

Where, after a decree is passed against several defendants, the decree-holder enters into an agreement with some of the defendants, by which the latter are discharged from liability under the decree, such agreement is an adjustment, in part, of the decree, and must be certified to the Court under section 258 of the Civil Procedure Code.

The plaintiff, decree-holder, obtained a decree against the first defendant, appellant, and two others in the Court of Small Causes and after partial satisfaction had been obtained, he transferred the decree to the respondent.

(1) I.L.R., 16 Cal., 40.

* Civil Miscellaneous Appeal No. 230 of 1907, presented against the order of M.R.By. C. V. Kumarasawmi Sastriar, City Civil Court Judge, Madras, in Execution Petition No. 373 of 1907, and Civil Miscellaneous Petition No. 1049 of 1907, connected with Suit No. 22207 of 1893 on the file of the Presidency Court of Small Causes, Madras.

MAHOMED
KHAN
BAHADUR
v.

MAHOMED
MUNAWAR
SAHIB.

The respondent had the decree transferred for execution to the City Civil Court and applied for execution against the appellant.

The further facts are stated in the judgment of the Court. Execution was ordered by the lower Court.

Appellant, first defendant, appealed to the High Court.

G. Krishnaswami Ayyar for appellant.

K. C. Desikachariar for respondent.

JUDGMENT.—In this case the first defendant in answer to an application by the transferee decree-holder for execution against him sets up an agreement entered into between himself, the original decree-holder and the transferee decree-holder by virtue of which the claims of the original decree-holder were satisfied, and the decree was transferred to the transferee for execution against the second defendant only who was no party to the agreement. The Judge of the City Civil Court held that this agreement was an adjustment of the decree within the meaning of section 258, Civil Procedure Code, and that, as it had not been certified, it could not be set up in bar of execution.

We agree with this decision under the section, if a decree is adjusted in whole or in part, the adjustment must be certified and unless certified cannot be recognised. Where there is a money decree against two defendants, an agreement discharging one of them is, in our opinion, an adjustment in part of the decree and so requires to be certified. In *Laldas v. Kishordas*(1), the agreement set up was come to before decree and all that was decided was that the existence and validity of such an agreement should be decided in execution under section 244, Civil Procedure Code. In *Krishnamachariar v. Rukmani Ammal*(2), also the agreement referred to was also entered into before decree. We are not called upon to consider the effect of such agreements before decree in this case, but, when after decree an agreement is made discharging some of the defendants, we think such an agreement is clearly an adjustment in part of the decree. The appeal is dismissed with costs. The order staying sale in Civil Miscellaneous Petition No. 719 of 1908 is discharged.

(1) I.L.R., 22 Bom., 463.

(2) 15 M.L.J., 370.