APPELLATE CIVIL.

Before Mr Justice Wallis and Mr. Justice Munro.

ANNAPURANI AMMAL (SECOND DEFENDANT), APPELLANT, 1908. February 14.

v.

SUBRAMANIAN CHETTIAR AND OTHERS (PLAINTIFF AND DEFENDANTS NOS. 1 AND 3), RESPONDENTS.*

Civil Procedure Code—Act XIV of 1882, *s.* 283, *suit under—Official Assignee of insolvent judgment-debtor not a necessary party to such suit—Decree in such suit cannot declare property liable to be attached, but only that it is the property of the judgment-debtor.*

Section 283 of the Code of Civil Procedure gives a statutory right of suit to the unsuccessful party in claim proceedings ; and when the property of the insolvent judgment-debtor which was attached in execution had vested in the Official Assingee during the pendency of such claim proceedings, the latter is not a necessary party to such suit.

The decree in such suit should, where property had so vested, only declare the property attached to belong to the judgment-debtor, and ought not to declare it liable to attachment.

A OBTAINED a decree for money against *B*, and, in execution, attached the crops on certain lands belonging to *B*. *C*, the wife of *B*, put in a claim petition stating that *B* had sold the lands to her, and that the crops belonged to her. Under orders of Court she deposited Rs. 125 as the value of the ground-nut crop. Her claim was allowed, and the amount deposited was paid back to her. During the pendency of the proceedings *B* sought the protection of the Insolvency Court and all his property was vested in the Official Assignee.

A brought a suit against *B*, *C*, and the Official Assignee, under section 283 of the Civil Procedure Code, to have it declared that the sale by *B* to *C* was fraudulent and that the crops belonged to *B*. The plaintiff prayed that *C* be directed to pay him the Rs. 125 deposited and returned to *C*. *B* and the Official Assignee remained *ex parte*.

* Second Appeal No. 848 of 1905, presented against the decree of F. D. P. Oldfield, Esq., District Judge of Tanjore, in Appeal Suit No. 842 of 1904, presented against the decree of M. R. Ry. T. S. Thiagaraja Aiyar, District Munsif of Mannargudi, in Original Suit No. 148 of 1903.

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A's suit was dismissed, and he appealed without making the Official Assignee a party. The District Court allowed the appeal and decreed as follows:—

"This Court doth order and decree that the decree of the lower Court be, and the same hereby is reversed, and it is hereby declared that the sale to second defendant of the land specified below is fraudulent and without consideration, and that the ground-nut and paddy crops raised by the first defendant on the said land and attached by the plaintiff belonged to first defendant, and that plaintiff do recover from second defendant Rs. 125 which she had deposited on account of the value of the said crops and of which she has obtained a refund, and this Court doth further order and decree that defendants do pay to plaintiff Rs. 32 for his costs of this appeal and Rs. 34-15-0 for his costs incurred in the lower Court.

C appealed to the High Court.

T. V. Muthukrishna Ayyar for *T. V. Seshagiri Ayyar* for appellant.

The Hon. The Advocate-General for first respondent.

JUDGMENT.—In this case the crops on the land of an insolvent-debtor were attached by the respondent. The appellant put in a claim which was allowed, and the decree-holder sued under section 283 of the Civil Procedure Code making the Official Assignee a party. The suit was dismissed by the District Munsif and the decree-holder alone appeals. The questions raised are whether under the circumstances the decree-holder was entitled to sue and, if so, whether he was entitled to appeal.

In *Sadodin* v. *Spiers* (1) it was held that, after the vesting order, the insolvent could not sue to recover property vested in the Official Assignee. This decision does not apply to the present case. The decree-holder has attached, and the appellant having successfully claimed the property, the decree-holder has a statutory right of suit to establish his right by instituting a suit under section 283, and this has recently been explained by the Privy Council in *Bibi Phul Kumari* v. *Ghamshyam Misra* (2), as a suit to set aside the summary order passed on the claim petition. The Official Assignee is not a necessary party to such a suit, and the questions must be answered in the affirmative. The decree-

(1) I. L. R., 3 Bom., 438. (2) 17 M. L. J., 618.

holder, however, after the judgment-debtor's insolvency, is not entitled to a decree declaring the property liable to be attached, but he is entitled to a decree declaring that the property is that of the judgment-debtor. This is what the first part of the decree of the lower Appellate Court gives. The rest of the decree which awards him a decree for Rs. 125 against the claimant must be set aside, as the right to this sum is now vested in the Official Assignee. The decree of the lower Appellate Court will be modified accordingly. Each party will bear his own costs throughout.

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Miller.

RAMACHANDRA NAIKER (PLAINTIFF), APPELLANT,

v.

VIJAYARAGAVULU NAIDU AND ANOTHER (DEFENDANTS NOS. 4 AND 5), RESPONDENTS.*

1908. January 8, 17.

Hindu Law—Will, construction of gift to female—Gift for maintenance may be of an absolute estate—Where testator gives a female immoveable property for maintenance and makes several devises of other properties to others and adds a clause declaring the gifts to be absolute, the gift for maintenance will be an absolute gift—Devisee in possession of land under an invalid will must be presumed to prescribe for the estate given by the will.

An absolute gift of immoveable property to a widow for maintenance is not unknown to Hindus or repugnant to their ideas of propriety.

In construing a will, every portion of it must be given the full effect which, on a natural and grammatical construction of the will, must be allowed to it, and no portion of it ought to be rejected unless such a construction makes the provisions of the will inconsistent with each other or leads to results which must be repugnant to the testator's ideas of propriety.

Where a Hindu testator by his will give immoveable property to a widow stating it to be for her maintenance, and, after making various other gifts, added a clause by which he declared that all the gifts under the will should be absolute, there is no such inconsistency or repugnancy in giving the clause its natural and grammatical construction by making it applicable to the gift to the widow, and she will accordingly take an absolute interest in the property.

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* Second Appeal No. 1416 of 1904, presented against the decree of F. D. P. Oldfield, Esq., District Judge of Tanjore, in Appeal Suit No. 416 of 1904, presented against the decree of M. R. Ry. C. V. Visvanatha Sastri, District Munsif of Shiyali, in Original Suit No. 125 of 1903.