

But the learned Judges in so holding seem to have regarded *Sandhu Taraganar v. Hussain Sahib*(1) as deciding that an auction purchaser is the representative of a decree-holder for the purposes of section 244 and to have followed that case. What was actually decided in *Sandhu Taraganar v. Hussain Sahib*(1) was that a purchaser from a decree-holder who had purchased in Court auction was a "representative."

KRISHNA  
SATAPASTI  
v.  
SARASVATULA  
SAMBASIVA  
ROW.

But however this may be, where the question is the right of a purchaser at Court auction to possession as against the judgment-debtor, we are of opinion that the purchaser is not the representative of the judgment-creditor within the meaning of the section.

This being our view it is not necessary for us to decide whether the question of the right of a purchaser at Court auction to recover possession from the judgment-debtor is a question relating to the execution of the decree within the meaning of section 244.

The second appeal is dismissed with costs.

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## APPELLATE CIVIL.

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

SAMBASIVA AYYAR AND OTHERS (DEFENDANTS).

APPELLANTS

v.

VENKATASWARA AYYAR (LEGAL REPRESENTATIVE OF THE  
PLAINTIFF), RESPONDENT.\*

*Hindu Law—Gift to widow, construction of—*

When a suit brought by a Hindu widow against her deceased husband's co-parceners for possession of her divided husband's share was compromised and certain lands were given to her and another donee in equal shares as full owners and the instrument recited that the gift was made out of motives of generosity :

1907.  
October  
14, 21.  
November  
4.

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(1) I.L.R., 28 Mad. 87.

\* Appeal No. 19 of 1907, presented under section 15 of the Letters Patent against the judgment of (Miller and Wallis, JJ.) in Second Appeal No. 638 of 1904, confirming under sections 575 and 587 of the Code of Civil Procedure the decree of the District Court of Trichinopoly in Appeal Suit No. 8 of 1903 presented against the decree of the District Munsif's Court of Kulittalai in Original Suit No. 293 of 1902.

SAMBASIVA  
 AYYAR  
 v.  
 VENKA-  
 TASWARA  
 AYYAR.

*Held, per Sir ARNOLD WHITE, C.J., and MILLER, J., (WALLIS, J., dissenting), that the widow took an absolute and alienable interest in her share of the lands given.*

The gift being made in the same terms to the two donees, there was no reason to suppose that the gift to the widow alone was restricted. Although the suit was brought to recover only a widow's estate, it was competent to the defendant by way of compromise to convey an estate in full ownership; and where the instrument in clear words conveys such an interest, no presumption in favour of a restricted gift ought to be made from the nature of the suit.

*Sreemutty Rabutty Dossee v. Sibchunder Mullick* (6 M.I.A., 1), distinguished.

THE facts of the case are stated in the report of the judgment. appealed against in I. L. R., 30 Mad., 356.

*R. S. Sankara Ayyar* for appellant.

*T. V. Seshagiri Ayyar* for respondent.

Sir ARNOLD WHITE, C.J. — There can be no doubt that the agreement of 1865 purports to give the properties mentioned in full ownership to the two donees. The question is—do the words which operate so as to convey an estate in full ownership to Viswam Ayyar convey a similar estate to the widow Venkammal; or, having regard to the circumstances in which the agreement was made, does Venkammal take merely a widow's estate? In the present case, as in *Jogeswar Narain Deo v. Ram Chandra Dutt*(1) the gift is made to the two donees—not in similar language, but under the very same words. So far as the intention of Minakshi Ayyar, the donor, is concerned, it seems to me that this goes some way to show that he intended the two donees to take the same estate in the property. It is no doubt true that Venkammal's rights in the suit, if any, were the rights of a Hindu widow and that if she could have got anything in the suit, which seems doubtful, her estate in any property she might have obtained would have been that of a Hindu widow. But this consideration, of course, did not prevent Minakshi Ayyar—if he were so minded—either from motives of generosity or from some other motive which is not apparent, from conveying an estate in full ownership to Venkammal. I think this is what he intended to do.

In *Sreemutty Rabutty Dossee v. Sibchunder Mullick*(2), the deed of assignment itself declared that the widow was entitled to the money in question as the share of her deceased husband "for her sole absolute use and benefit." The deed itself therefore indicated the

(1) I.L.R., 23 Calc., 672.

(2) 6 M.I.A., 1.

capacity in which the widow took. This is not so in the present case. Although it is clear from the recitals to the deed that the only interest which Venkammal had in the suit was a widow's interest, I think the deed, read as a whole, indicates the intention of the donor that she should take a larger estate than she claimed in the suit. It may be observed that, though there can be little doubt that the agreement was in the nature of a compromise, it does not expressly purport to have been entered into by way of compromise of the suit. The words are "I gave you as a matter of favour," etc.

I think the Court of First Instance was right and that the decree of that Court should be restored, and the decree of the lower Appellate Court and that of the High Court in Second Appeal No. 638 of 1904 set aside.

The defendants are entitled to their costs throughout.

WALLIS, J.—I adheré to my former judgment.

MILLER, J.—I adhere to the conclusion at which I had arrived before and which I have stated in my previous judgment.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Wallis.*

NARASIMMA CHARI

*v.*

CHAIRMAN, MUNICIPAL COUNCIL, CONJEEVERAM.\*

1907  
September  
4, 5.  
1908  
February 7.

*District Municipalities Act (Madras Act), IV of 1884, ss. 3 (27), 169, 263 —  
License not required under s. 169 when verandah or other covering  
erected within the limits of adjacent property.*

A public street as defined in section 3 (27), of the Madras District Municipalities Act, extends only up to the boundaries of the adjacent property.

The special license under section 169 of the Act which is required in the case of projections over pynals and pavements in front of any building

\* Criminal Revision Case No. 171 of 1907, presented under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the judgment of S. M. V. Oosman Sahib, Deputy Magistrate of Saidapet, in Criminal Appeal No. 3 of 1907, confirming the conviction and sentence passed upon the petitioner by M. R. Ry. Seshagiri Rao, Stationary Sub-Magistrate of Conjeeveram, in Calendar Case No. 809 of 1906.