

by the Court, and for what amount he is entitled to a lien on such property under section 221 of Indian Contract Act. Fresh evidence may be taken. The appeal is allowed with costs here and in the lower Court. Costs will be paid out of the estate.

CHIDAM-
BARAM
CHETTIAR
v.
TINNEVELLY
SARANGA-
PANY
SUGAR
MILLS
COMPANY,
LIMITED.

APPELLATE CIVIL.

Before Mr. Justice Roddam and Mr. Justice Munro.

BUURUDEEN SAHIB AND ANOTHER (FIRST AND SECOND
PETITIONERS—THIRD AND FOURTH DEFENDANTS), APPELLANTS.

1908
January 17.

v.

A. DUL RAHIM SAHIB (RESPONDENT—PLAINTIFF), RESPONDENT.*

Civil Procedure Code, Act XIV of 1882. ss. 244, 278—When judgment-debtor objects as trustee, claim falls within s. 278 and the order on such claim is not appealable—Decree directing sale Waqf property valid.

Where the judgment-debtor or his representative objects to the attachment and sale of property in execution on the ground that he holds the property in trust for some third person or a charitable institution, the claim must be investigated under the provisions of sections 278—283 of the Code of Civil Procedure and not under section 244.

An order passed on such claim must be challenged by a regular suit and not by appeal.

A decree directing the sale of waqf property may, in certain circumstances, be valid. Such a decree is not against public policy and is not necessarily *ultra vires*.

THE facts of the case are sufficiently stated in the judgment.

G. S. Ramachandra Ayyar for appellant.

T. R. Venkatarama Sastri for The Hon. the Acting Advocate-General for respondent.

JUDGMENT.—The respondent obtained a decree for sale of certain property in a mortgage suit against the father of the appellants.

After decree, the defendant died and the respondent applied for leave to execute the decree against the appellants by sale of

* Civil Miscellaneous Second Appeal No. 14 of 1907, presented against the decree of F. D. P. Oldfield, Esq., District Judge of Tanjore, in Appeal Suit No. 383 of 1906, presented against the order of M. R. Ry. P. Aiyasami Mudaliar, District Munsif of Tiruvadi (Execution Application No. 71 of 1906 in Execution Petition No. 1313 of 1905) (Original Suit No. 203 of 1901).

BUDDEDEEN SAHIB v. ABDUL RAHIM SAHIB. the lands under section 231, Civil Procedure Code. The appellants opposed the application on the ground that the land ordered to be sold was 'Waqf' property of which they were in possession not as representatives of their deceased father but as hereditary trustees of the property.

The District Munsif held that he could not go into the question under section 244, Civil Procedure Code. On appeal the District Judge also held that section 244 did not apply, and if it did he dismissed the appellant's appeal.

The second appeal is brought from this decision. It is contended before us that no appeal or second appeal lies, as the appellant's only remedy is by proceeding under section 278 to 283, Civil Procedure Code, and section 244 does not apply.

We think this contention is right. The appellant's objection is taken as trustees and in a different capacity to their position as representatives of their father, and in that capacity they are not within section 244.

This is the result of the decision in *Murigea v. Hayat Saheb*(1) where it is stated that Ranade, J, laid down the proper procedure as follows:—"Where he asserts that he holds the property in trust for some third person or body of persons, or a religious charity or institution, the claim must be investigated under the provisions of sections 278 to 283, and the order passed therein cannot be challenged by an appeal, but must form the subject of a separate suit."

See also *Ramanathan Chettiar v. Levai Marakayar*(2) and *Kumareta Serriagarar v. Sabapathy Chettiar*(3).

In this case there is no ground for holding that the decree is *ultra vires*. No question of public policy arises, for a decree for the sale of 'Waqf' property may, in certain circumstances, be perfectly valid. The cases cited from *Lakshmanaswami Naidu v. Rangamma*(4) and *Raja of Vizianagram v. Dantivada Chelliah*(5) therefore do not apply.

We dismiss the appeal with costs.

(1) I. L. R., 23 Bom., 237.

(2) I. L. R., 23 Mad., 195.

(3) I. L. R., 30 Mad., 26.

(4) I. L. R., 26 Mad., 31.

(5) I. L. R., 28 Mad., 84.