

taken by the Bombay High Court in *Ohagan Guman v. Lakshman Dagdu*(1), with which we agree. In *Ohundra Nath Dey v. Byroda Shoondury Ghose*(2), it appears to have been taken for granted that a transferee decree-holder could not sell property which the original decree-holder was debarred from selling under section 99 of the Transfer of Property Act. With regard to *Banh Bal v. Manni Lal*(3), the learned Judges do not advert to the language of section 232 of the Civil Procedure Code and we are unable to agree with the conclusion at which they have arrived. There is, however, nothing in section 99 of the Transfer of Property Act to prohibit the attachment of the mortgaged property, and, in allowing the appeal, our decision is without prejudice to the earlier order of the 21st December 1906 directing the attachment of the mortgaged property. The respondent will pay costs in this and the lower Court.

JIVA-  
BATHNAM  
MUDALIAR  
v.  
SRINIVASA  
MUDALIAR.

## APPELLATE CIVIL.

*Before Mr. Justice Wallis and Mr. Justice Miller.*

RAGHAVAN, MINOR BY GUARDIAN SANKARA SASTRIAL  
AND ANOTHER (DEFENDANTS—PETITIONERS), APPELLANTS,  
v.  
ALAMELU AMMAL AND ANOTHER (PLAINTIFFS—RESPON-  
DENT), RESPONDENTS.\*

*Contract Act—Act IX of 1872, ss. 69, 70—Money paid for income-tax by the person assessed and on whom demand is made cannot under these sections be recovered from a person who is alleged to be the party really liable to pay.*

When the income-tax authorities assess a person in respect of certain income alleged to be derived by him and recover the tax so assessed from him, such person cannot, under section 69 or section 70 of the Contract Act, recover the amount so paid from another person on the ground that such other was in actual receipt of the income. Section 69 cannot apply, as the latter person, not being assessed was not legally bound to pay the tax, and section 70 cannot apply as the person paying the tax did so on his own account and not on behalf of another.

(1) 9 Bom. L. Rep., 728.

(2) 1. L. R., 22 Calc., 813.

(3) 1. L. R., 27 All., 450.

\* Appeal No. 23 of 1907, presented under section 15 of the Letters Patent against the judgment of Mr. Justice Boddam in Civil Revision Petition No. 486 of 1906, presented to the High Court to revise the decree of the Subordinate Judge's Court, Kumbakonam, in Small Cause Suit No. 132 of 1906.

BAGHAVAN  
v.  
ALAMELU  
AMMAL.

THE facts necessary for the report of this case are sufficiently stated in the judgment.

*K. Ramachandra Ayyar* for appellants.

*T. R. Venkatarama Sastri* for respondents.

JUDGMENT.—In this case the income-tax authorities assessed the plaintiffs who are the widows of one Kalyanarama Sastrigal, who died in 1904, for income-tax for the year 1905-1906 in respect of certain outstandings which formed part of the estate of the deceased at the time of his death.

The plaintiffs alleged that the outstandings in question had not come to them, but had been bequeathed under the will of the deceased to the present defendants. Nevertheless, the income-tax authorities persisted in their demand, and levied the tax from the plaintiffs, who now sue to recover the amount paid by them for the defendants.

The Subordinate Judge held that the case came within section 70 of the Indian Contract Act, and the learned Judge from whom the present appeal is brought refused to interfere with his judgment in revision. In this Court the respondents relied on section 69 of the Indian Contract Act as well, but in our judgment the case does not fall within either of these sections. Under section 14 of the Income Tax Act, 1886, the Collector is to determine what persons are chargeable under Part IV which includes the sources of income here in question and the amount at which every person so chargeable shall be assessed. In the present case the Collector has not determined that the defendants were chargeable under Part IV or assessed them at any amount. Consequently the defendants were not legally bound to pay the tax, and the plaintiffs cannot say that the defendants were bound to pay is so as to make the terms of section 69 applicable. Nor can the plaintiffs be said in our opinion to have made the payment for the defendants not intending to act gratuitously so as to bring the case within section 70. It was from the plaintiffs themselves that payment was demanded and enforced by the income-tax authorities, and it cannot be said to have been made by the plaintiffs for the defendants merely because the income-tax authorities ought, it is suggested, to have demanded and exacted payment from the defendants instead of from the plaintiffs. We may further observe that there is no evidence in the case that the defendants had been in receipt of income which would have ren-

dered them liable to assessment for the year in question. We must, therefore, allow the appeal, and set aside the decree of the Subordinate Judge and dismiss the suit with costs throughout.

RAGHAVAN  
v.  
ALAMELU  
AMMAL.

## APPELLATE CIVIL.

*Before Mr. Justice Miller.*

KOLINTAVITA MAMA AMMA (SECOND DEFENDANT),  
PETITIONER,

1907

October 8, 10.

v.

KOLINTAVITA HAJI KANDU AND ANOTHER (PLAINTIFFS AND  
FIRST DEFENDANT), RESPONDENTS. \*

*Civil Procedure Code, Act XIV of 1882, s. 244—Claim for damages by auction Purchaser against judgment-debtor and others for injury done to property purchased after confirmation of sale not a question relating to execution within s. 244.*

Where after confirmation of a sale of property in execution at a Court auction and before delivery of possession to the auction purchaser, the judgment-dabtor and others not parties to the decree trespass upon such property and cause injury to it, the claim of such auction purchaser for damages in respect of such injury, is not a 'question relating to the execution of the decree, within section 244 of the Code of Civil Procedure and must be enforced by separate suit and not in execution Proceedings.

*Obiter:* Even supposing that such a claim was one relating to execution, the auction purchaser is entitled but not bound to implead all the wrong doers in one suit and ought not to be compelled to proceed against the judgment-debtor under section 244 and against those not parties by a separate suit.

THE facts are stated in the judgment on appeal, the material portion of which was as follows:—

• "First defendant obtained a decree against second defendant, in execution of which plaintiff purchased the point property. Plaintiff alleges that the materials of the plaint house purchased by him have been removed by defendants Nos. 1 to 5. The District Munsif held that plaintiff's remedy against defendants Nos. 1 and 2 lies in an application under section 244, Civil

\* Civil Revision Petition No. 246 of 1907, presented under section 622 of the Code of Civil Procedure, praying the High Court to revise the decree of W. W. Phillips, Esq., District judge of North Malabar, in Appeal Suit No. 319 of 1906, presented against the order of the District Munsif of Kuthuparamba in Original Suit No. 846 of 1904.