

APPELLATE CIVIL.

*Before Mr. Justice Miller.*1908.
December 4.

SREE KRISHNA DOSS (PETITIONER), PETITIONER,

v.

CHANDOOK CHAND (RESPONDENT), RESPONDENT.*

Civil Procedure Code, Act XIV of 1882, ss. 295, 622—Interference of High Court on revision against an order under s. 295 of the Code of Civil Procedure.

The High Court will not, as a general rule, interfere by way of revision under section 622 of the Code of Civil Procedure, when the party has a remedy elsewhere than in the High Court. The High Court will however interfere where the right of the party is clear and where the result of non-interference will be only to multiply proceedings by driving the party to a suit in which there can be no defence.

A Court which has found that a party is entitled to rateable distribution under section 295 of the Code of Civil Procedure, has no discretionary power to refuse such relief; and in refusing to grant it, such Court declines a jurisdiction vested in it by law.

PETITION under section 622 of the Code of Civil Procedure, praying the High Court to revise the order of C. V. Kumaraswami Sastri, City Civil Judge, Madras, in Civil Miscellaneous Petition No. 1162 of 1907 in Execution Petition No. 382 of 1907.

The plaintiff attached certain properties belonging to defendant in execution of two money decrees obtained against him. Subsequent to his application for execution the counter-petitioner, who had a money decree against defendant, brought to sale certain other properties of defendant, and, with the permission of the Court, bid for and purchased the properties, and after setting off his decree amount, paid the balance of the purchase money into Court.

The plaintiffs applied under section 295 that the counter-petitioner should be directed to pay into Court the whole purchase money to be rateably distributed. The lower Court passed an order, the material portion of which is as follows:—

“Under these circumstances the question is whether I ought to set aside the order allowing counter-petitioner leave to bid and to set off and to direct him to bring the money into Court. That I have got the power to do so is clear from the case of

* Civil Revision Petition No. 168 of 1908.

Madden v. Chappani(1), but I am not bound to do so if the other attaching creditor has assets against which he could proceed. In the present case there is the further fact that the counter-petitioner obtained leave to bid on the 4th October 1907 before the properties were actually attached by the petitioner, and there is nothing to show that he was aware of the execution proceedings taken by the petitioner when he obtained leave to bid and purchased. It is always open to the petitioner to exhaust his remedies against the remaining properties of the judgment-debtor and to file a regular suit under section 295 of the Code against counter-petitioner for any balance that might be due if rateable distribution had been ordered.

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The petitions are dismissed. Under the circumstances each party will bear his own costs."

The plaintiff moved the High Court to revise the order under section 622 of the Code of Civil Procedure.

T. R. Venkatarama Sastri for petitioner.

T. Rajagopalachariar for *V. V. Srinivasa Ayyangar* for respondent.

JUDGMENT.—The learned Judge of the City Civil Court has found that the petitioner is entitled under section 295 of the Code of Civil Procedure to rateable distribution, but has refused his application therefor on the ground that there is other property of the debtor which, though not yet realized by execution in the Court may be made available for the satisfaction of his claims: relying on *Madden v. Chappani*(1) he has referred the petitioner to a separate suit.

I have no doubt that this order is one which can be revised under section 622 of the Civil Procedure Code: that is established by *Tiruchittambala Chetti v. Seshayyengar*(2) and *Vrarahava v. Parasurama*(2). Here the learned Judge has declined jurisdiction, holding wrongly, as I think, that he has a discretion so to do. Section 295 does not give such a discretion; it does not permit the Judge in his discretion to refuse to a party, who to his knowledge is entitled to relief under the section, the relief to which he is entitled. The decision in *Madden v. Chappani*(1) does not illustrate the circumstances in which a Judge would be justified in referring a party to a suit, but I imagine that they would be

(1) (1888) I.L.R., 11 Mad., 366.

(2) (1882) I.L.R., 4 Mad., 383.

(3) (1892) I.L.R., 15 Mad., 372.

MILLER, J. circumstances in which there might arise a question whether there was a right in one or other of the parties to the relief for which the section provides. Here there is no such question.

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Then it is said that because there is a remedy by suit I should not interfere. I do not depart from the view to which I have recently given expression that, where a party has a remedy elsewhere than in the High Court, the High Court should not, except in special cases, interfere under section 622.

But here we have a case in which there is no doubt as to the rights of the parties, and no remedy if I do not interfere, except by a suit to which there can be no defence, and which therefore would merely multiply proceedings.

In such a case the lesser evil, at any rate, is interference under section 622.

I set aside the order of the learned Judge and direct him to make a fresh order according to law.

The respondent will pay the appellant's costs of his petition.

APPELLATE CIVIL.

Before Mr. Justice Munro and Mr. Justice Abdur Rahim.

1909.
January 12.

PONNUSAMY NADAR AND OTHERS (COUNTER-PETITIONERS—
DEPENDANTS NOS. 3 TO 6), APPELLANTS,

v.

DORAISAMY AYYAR (PETITIONER—PLAINTIFF),
RESPONDENT.*

Civil Procedure Code—Act XIV of 1882, s. 246—Not applicable where both the decrees are not before the Court for execution.

Section 246 of the Code of Civil Procedure applies only where both the decrees which are sought to be set off against each other are before the Court for execution.

Chajmal Das v. Lal Dharam Singh [(1902) I.L.R., 24 All., 481], followed.

Sinnu Pandaram v. Santhoji Row [(1903) I.L.R., 26 Mad., 428], distinguished.

APPEAL against the order of T. V. Anantan Nayar, Subordinate Judge of Kumbakonam, in Execution Application No. 822 of

* Appeal against Order No. 190 of 1907.