

1899, and we must call upon the District Judge of South Canara for a finding on the first of the issues settled by the District Munsif in the light of the above observations.

The finding should be submitted in six weeks and seven days will be allowed for filing objections.

[The District Judge found the mulgeni a real transaction and the appeal was dismissed.]

MILLER
AND
SANKARAN-
NAIR, JJ.

SESHAPPAYA
v.
VENKAT-
RAMANA
UPADYA.

APPELLATE CIVIL.

Before Mr. Justice Abdur Rahim.

SRINIVASA AIYANGAR (PETITIONER), RESPONDENT,

v.

KANTHIMATHI AMMAL (RESPONDENT), RESPONDENT.*

1910.
January 17,
18.

Civil Procedure Code, Act XIV of 1882, s. 295—Rateable distribution under several decrees: "Same judgment-debtor"—Decree against judgment-debtor; Subsequent decree against his legal representatives to be satisfied out of his estate.

A obtained a decree against one Maruthamuthu Pillai; subsequently, B obtained a decree against the legal representatives of Maruthamuthu Pillai and his estate in their hands. B applied under section 295, Civil Procedure Code, to share rateably in the proceeds of property sold in execution of A's decree:

Held, that B was not entitled to do so. *Govind Abuji Jakhadi v. Mahoniraj Vinayak Jakhadi*, [(1901) I.L.R., 25 Bom., 434], followed.

When a decree is obtained against the legal representatives of a deceased person, they are the judgment-debtors. *Kaluppan Seruvikaran v. Varadarajulu* [(1909) 19 M.L.J., 651], referred to.

PETITION under section 622 of the Code of Civil Procedure of 1882, praying the High Court to revise the order of N. Sundara Aiyar, District Munsif of Tiruvadi, in Execution Application No. 454 of 1907 in Original Suit No. 479 of 1898.

The respondent obtained a decree in Original Suit No. 479 of 1898 against one Maruthamuthu Pillai and, in execution, attached a house. He obtained leave under section 294, Civil Procedure Code, to bid at the sale of the house and set off the purchase money against the decree amount, and purchased the property on 27th

* Civil Revision Petition No. 563 of 1907.

ABDUR
RAHIM, J.
—
SRINIVASA
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AMMAL.

February 1907 for Rs. 370. The purchase money was set off against the decree amount. After the death of Maruthamuthu Pillai, the petitioner filed S.C. No. 895 of 1903 against his sons and obtained a decree against the assets of the family and in execution of his decree attached the same house on 9th December 1905.

The District Munsif, following 25 Bom., 194, dismissed the application.

The petitioner applied to the High Court under section 622.

G. S. Ramachandra Ayyar for petitioner.

A. Krishnasawmy Ayyar for respondent.

JUDGMENT.—The question is whether the judgment-debtors of the petitioner and the respondent are the same within the meaning of section 295, Civil Procedure Code. The persons against whom the petitioner obtained his decree are the sons of one Maruthamuthu Pillai and the decree is to be satisfied out of the assets of the family in their hands, and the person against whom the respondent obtained her decree is Maruthamuthu Pillai himself. The Munsif has rightly held that the decision in *Govind Abaji Jakhadi v. Mohoniraj Vinayak Jakhadi*(1) covers the question and is opposed to the petitioner's contention. And it seems to me that that ruling is in accordance with the language of section 295, Civil Procedure Code. The fact that the two decrees are to be realised out of the family property is not decisive of the question against whom the decrees are made. And as has been pointed in *Kuliappan Servaikaran v. Varadarajulu*(2), when a decree is obtained against the legal representatives of a deceased person, the legal representatives are the judgment-debtors and not the estate of the deceased.

This petition is dismissed with costs.

A Letters Patent Appeal No. 18 of 1910 against the above judgment was preferred with the result that the judgment of Abdur Rahim, J., was affirmed.

(1) (1901) I.L.R., 25 Bom., 194.

(2) (1909) 19¹ L.J., 651.