

BENSON  
AND  
MILLER, JJ.

VYTHINADA  
AIYAR

v.  
VYTHINADA  
AIYAR.

and *Anando Kishore Dass Bakshi v. Anando Kishore Bose*(1)). The decree made in terms of this compromise can be executed. We do not agree with the District Judge that it has become impossible to fulfil the contract. No doubt there is an obstacle which prevents the immediate execution of the decree by sale of the land, but, until it is shown that that obstacle cannot be removed, the execution cannot be said to have become impossible. In deed it was not contended before us that the contract is impossible of fulfilment but that we ought to construe the agreement as containing a condition that if the land is not immediately available for execution the plaintiff is entitled to proceed with his other remedies. We are unable to read this condition into the razinama.

The application for execution against the person of the first defendant was therefore in our opinion premature and we allow the appeal with costs here and in the lower Appellate Court and restore the District Munsif's order dismissing the petition.

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## APPELLATE CIVIL.

*Before Mr. Justice Benson and Mr. Justice Abdur Rahim.*

ENDOORI VENKATARAMANIAH (DEFENDANT—JUDGMENT-DEBTOR), APPELLANT,

v.

VENKATACHAINULU AND ANOTHER (TRANSFEREE DECREE-HOLDER AND PLAINTIFF), RESPONDENTS.\*

*Civil Procedure Code—Act XIV of 1882, s. 232—Transfer of portion of decree valid—Decree for maintenance, assignability of.*

The transferee of a portion of a decree is a transferee of the decree within the meaning of section 232 of the Code of Civil Procedure of 1882.

The transfer of a decree for maintenance to the extent of the arrears, that had accrued due up to the date of transfer, is valid and may be recognised by the Court if the judgment-debtor will not be prejudiced by such recognition.

APPEAL against the order of A. L. Hannay, District Judge of Vizagapatam, in Appeal Suit No. 30 of 1908, presented against the order of T. N. Lakshmana Row, District Munsif of

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(1) (1887) I.L.R., 14 Calc., 50 at p. 53.

\* Civil Miscellaneous Second Appeal No. 84 of 1908.

Vizagapatam, in Execution Petition No. 607 of 1907 and Miscellaneous Petition No. 1081 of 1907 (Original Suit No. 563 of 1877).

The second respondent had obtained a decree for maintenance against the appellant. She transferred the decree so far as it related to the arrears accrued due to the first respondent who applied under section 232 of the Civil Procedure Code of 1882 to be recognised as the transferee decree-holder. His application was rejected by the District Munsif. On appeal the District Court set aside the order of the Munsif and allowed the application.

The judgment-debtor appealed to the High Court.

*S. Srinivasa Ayyangar* for appellant.

*V. Ramesam* for first respondent.

JUDGMENT.—In this case what was transferred was not the whole maintenance decree but only that portion of the decree which related to arrears of maintenance that had already accrued due, that being the only portion of the decree which could be transferred. The question is whether the transfer should be recognised by the Court under section 232 of the Code of Civil Procedure. It is contended that the transfers contemplated in section 232 of the Code of Civil Procedure are transfers of the whole decree, and that a transfer of a portion cannot be recognised. *Kishore Chand Bhakat v. Gisborne & Company*(1), which was approved in *Muthunarayana Reddi v. Balakrishna Reddi*(2), is against this view and we are prepared to follow it. The transfer then may be recognised if the Court thinks the case a proper one. We see no reason in this case why the transfer should not be recognised. The transfer is of all the arrears due up to the date of the transfer and it is not shown that the judgment-debtor will be in any way injured by the recognition of the transfer. As to the contention that a decree for maintenance cannot be transferred, that contention can have no force in so far as the transfer of the decree in respect of arrears accrued is concerned, and that is all that has been transferred. The appeal is dismissed with costs.

BENSON  
AND  
ABDUL  
RAHIM, JJ.

ENDORE  
VENKATA-  
RAMANIAM  
v.  
VENKATA-  
CHAIYURU.

(1) (1890) I.L.B., 17 Calc., 341.

(2) (1896) I.L.R., 19 Mad., 306.