

MUNRO
AND
ABDUR
RAHIM, JJ.
KALIAPPAN,
SERVAIKARAN
v.
VARADA-
RAJULU.

Raghunathdas(1) "a math, like an idol, is in Hindu Law a judicial person capable of acquiring, holding and vindicating legal rights, though of necessity it can only act in relation to those rights through the medium of some human agency. When the property is vested in the math, then litigation in respect of it has ordinarily to be conducted by, and in the name of, the manager, not because the legal property is in the manager, but because it is the established practice that the suit would be brought in that form (see *Maharanees Shibessouree Debia v. Mothooranath Acharjo*(2), *Juggodumba Dossee v. Puddomoney Dossee*(3), *Rupa Jagshet v. Krishnaji Govind*(4), *Manohar v. Lakhmiram*(5) and *Kondo v. Babaji*(6)). But a person in whose name a suit is thus brought has in relation to that suit a distinct capacity: he is therein a stranger to himself in his personal and private capacity in a Court of law." As has already been shown the decree in the present case is not against the estate but against the legal representative. This appeal fails and is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Miller.

1909.
March 31.

VYTHINADA AIYAR (FIRST DEFENDANT—RESPONDENT),
APPELLANT,

v.

VYTHINADA AIYAR *alias* NARAYANAPPA AIYAR,
INSANE REPRESENTED BY M. R. SRINIVASA AIYAR, NEXT FRIEND
(PLAINTIFF—PETITIONER), RESPONDENT.*

Compromise after decree, execution of—Adjustment of mesne profits after decree enforceable by execution—When decree becomes incapable of execution.

Where, in a suit for land and mesne profits, the decree leaves the amount of mesne profits undetermined, the suit to that extent remains undisposed of and it is open to the parties to adjust that portion of the suit by a lawful compromise; and a decree made in accordance with the terms of such compromise can be enforced by execution.

(1) (1904) I.L.R., 28 Bom., 215 at p. 223.

(3) (1875) 15 Beng. L.R., 318 at p. 330.

(5) (1888) I.L.R., 12 Bom., 247.

(2) (1869) 13 M.L.A., 270 at p. 274.

(4) (1885) I.L.R., 9 Bom., 169.

(6) (1881) P.J., 337.

* Civil Miscellaneous Second Appeal No. 39 of 1908.

Where such compromise provides that the amount of mesne profits must be recovered by execution first against certain land, execution cannot be taken against the person of the judgment-debtor, merely because the land is not immediately available for sale in execution. It must be shown that the obstacle is one which cannot be removed.

APPEAL against the decree of F. D. P. Oldfield, District Judge of Tanjore, in Appeal Suit No. 83 of 1908, presented against the order of C. S. Venkataramana Rau, District Munsif of Mannargudi, in E.P. No. 4 E.P.R. 467 of 1907 in Original Suit No. 36 of 1900.

In a suit for partition by the plaintiff a decree was passed awarding his share in the family properties and mesne profits from date of suit to be determined in execution. On a petition being presented for ascertaining the amount of mesne profits, the parties entered into a compromise by which the amount of mesne profits was fixed and it was provided that the amount should be recovered by execution first against certain land. The plaintiff in execution attached such land but the attachment was raised in a claim petition by a third party. Plaintiff thereupon applied for execution against the person of the first defendant. The District Munsif dismissed the application.

On appeal, the District Judge reversed the order and allowed execution.

Defendant appealed to the High Court.

The Hon. the Advocate-General for appellant.

T. R. Venkatrama Sastri and *V. Purushothma Aiyar* for respondent.

JUDGMENT.—We are unable to accede to the contention that it was beyond the power of the Court to execute as a part of the decree the agreement of the parties that the mesne profits should be recoverable by execution first against the land described as the third sethi land.

The amount of mesne profits was left undetermined by the decree and to that extent the suit remained undisposed of. In effect there still remained one issue for disposal, and it was open to the parties to adjust that part of the suit by a lawful compromise. The cases to which the Advocate-General drew our attention support this view of the matter, (*Radha Prasad Singh v. Lal Sahab Rai*(1), *Muhammad Umarjan Khan v. Zinat Begam*(2))

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(1) (1891) I.L.R., 13 All., 53 at p. 65. (2) (1903) I.L.R., 25 All., 385.

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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.

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

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

* Civil Miscellaneous Second Appeal No. 84 of 1908.