

K. Srinivasa Ayyangar for second respondent and *S. Muthia Mulaliyar* for fourth respondent.

JUDGMENT.—It is admitted that when the sale took place the order for stay made by this Court had not been communicated to the Subordinate Court.

We think the order only became effective when communicated to the Subordinate Court. On this question we prefer to follow the judgment of the Calcutta High Court in *Besseswari Chowdhurany v. Horrosundar Mozumdar*(1) rather than the later judgment in *Hukum Chand Boid v. Kamalanand Singh*(2).

There is authority for the proposition that a sale in violation of an order for stay is an irregularity (see “Freeman on Execution,” articles 32, 33). Though we are not prepared to say the view of the Subordinate Judge that the sale was an irregularity was wrong, we prefer to rest our judgment on the ground stated.

The appeal is dismissed with costs.

WHITE, C.J.,
AND
ABDUR
RAHIM, J.
—
MUTHU-
KUMARASAMI
ROWTHOR
MINDA
NAYINAR
v.
KUPPUSAMI
AYYANGAR.

APPELLATE CIVIL.

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

KALIAPPAN SERVAIKARAN (PLAINTIFF-PETITIONER), APPELLANT,

v.

VARADARAJULU (MINOR) BY HIS NEXT FRIEND SINGARAVELU
THEVAR AND ANOTHER (DEFENDANTS), RESPONDENTS.*

1909.
August 13,
25.

Civil Procedure Code—Act XIV of 1882, s. 252—Decree against assets of deceased in the hands of representative is a decree against representative—Such decree executable only against such representative or his representative.

In a suit brought against A the widow of a deceased person as his representative, a decree was passed directing the recovery of the sum sued for from the estate of the defendant's deceased husband in her hands. Another person B brought a suit against A to establish his title to the property of the deceased and having obtained a decree in his favour took possession of the estate.

The decree-holder sought to execute the decree against B under section 252 of the Code of Civil Procedure:

(1) (1892) 1 Calc. W.N., 226.

(2) (1906) I.L.R., 33 Calc., 927.

* Civil Miscellaneous Second Appeal No. 18 of 1908.

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Held, that the decree was not against the estate but against A, the legal representative and was capable of execution only against A and her representatives
Subbanna v. Venkatakrisnan, [(1888) I.L.R., 11 Mad., 408], followed.

KALIAPPAN
SERVAIKARAN
v.
VARADARAJULU.

APPEAL against the order of F. D. P. Oldfield, District Judge of Tanjore, in Appeal Suit No. 798 of 1907, presented against the order of T. S. Thiagaraja Aiyar, District Munsif of Mannargudi, in Execution Petition No. II, Execution Petition Register No. 354 of 1907 (Original Suit No. 47 of 1906).

The facts for the purpose of this case are sufficiently stated in the judgment.

C. V. Anantakrishna Ayyar for appellant.

G. S. Ramachandra Ayyar for respondents.

JUDGMENT.—The appellant sued in Original Suit No. 47 of 1906 to recover the amount due on a promote executed by one Muthuchella, the deceased. He made the widow of Muthuchella defendant in the suit, and, on the 23rd March 1906, got an *ex parte* decree empowering him to recover the amount due under the note “from the estate of the defendant’s deceased husband in her hands.” The decree also directed the defendant to pay the appellant a certain sum for his costs. The deceased Muthuchella left daughters but no son. Prior to the institution of Original Suit No. 47 of 1906, above referred to, Varadarajulu, son of one of the daughters, brought a suit (Original Suit No. 14 of 1904) against the widow of the deceased and others to establish a will executed by the deceased in his favour and to recover the property bequeathed to him thereunder. The suit was dismissed on the 27th September 1905, and it was while an appeal was pending in the District Court that the decree in Original Suit No. 47 of 1906 was obtained. The District Court upheld the will and gave the plaintiff Varadarajulu a decree on the 27th August 1906. Varadarajulu took delivery through the Court of the properties decreed to him. The appellant then put in Execution Petition No. 354 of 1907 in Original Suit No. 47 of 1906 and prayed that Varadarajulu might be added as second defendant as representative of the widow, the original sole defendant, and that execution might proceed against the properties of the deceased Muthuchella. The District Munsif ordered Varadarajulu to be brought on record as representative of the deceased Muthuchella’s estate and allowed execution to proceed. On appeal the District Munsif’s order was set aside.

The argument before us is that the decree in Original Suit No. 47 of 1906 was a decree against the estate of the deceased Muthuchella; that at the time that suit was brought the widow was the proper person to represent the estate, Varadarajulu's suit having been dismissed in the first Court; and that as Varadarajulu was subsequently found to be the proper person to represent the estate he cannot object to being brought on record in execution, and to execution proceeding. This argument is based upon a misconception. When a person is sued as the legal representative of a deceased person for the recovery of a debt due by the deceased, and a decree is given for money to be paid out of the assets of the deceased in the hands of the legal representative, the decree is none the less a decree against the legal representative. Section 252, Civil Procedure Code, makes this clear. It refers to the legal representative as the judgment-debtor and it makes him personally liable under certain circumstances. It follows that such a decree can only be executed against the legal representative who was made defendant in the suit or his or her representatives. Varadarajulu is not a representative of the widow, and the decree obtained against her cannot be executed against him. This view is supported by *Subbanna v. Venkatakrishnan*(1) in which the cases bearing on the point are considered. There the plaintiff got a decree against the mother of one Subbaraya as his legal representative on a bond executed by him being unaware that Subbaraya had left an adopted son. It was held that the plaintiff was not entitled to execute the decree as against the estate of Subbaraya in the hands of the adopted son. There is no material distinction between the facts of that case and the facts of the present case. In that case the plaintiff believed that the mother was the heir of the deceased. In the present case all that the plaintiff can say is that he believed the widow was the heir of the deceased. The fact that his belief may have been based on the circumstance that Varadarajulu's suit failed in the first Court can make no difference in principle. (*Sudindra v. Budan*(2)) has no application to the present case. There the decree was against a mutt, and not against the person on the record representing the mutt. As was pointed out in *Babajirao Gambhirsing v. Laxmandas Guru*

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(1) (1888) I.L.R., 11 Mad., 408.

(2) (1886) I.L.R., 9 Mad., 80.

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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.