

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Bhashyam Ayyangar.

VENGAPAYYAN (CLAIMANT), APPELLANT, IN APPEAL AGAINST ORDER
No. 13 OF 1902, AND

1902.
December 8.

MAHALINGA BHAT (CLAIMANT), APPELLANT, IN APPEAL AGAINST
ORDER No. 14 OF 1902,

?

KARIMPANAKAL PARVATI AND TWO OTHERS (DECREE-HOLDERS),
RESPONDENTS, IN BOTH THE APPEALS.*

Civil Procedure Code—Act XIV of 1882, s. 241—Execution proceedings—Question raised as to whether improvements attached in execution were property of deceased judgment-debtor or of his representatives in their own right.

A question as to whether improvements on land attached in execution of a decree are property of a deceased judgment-debtor which has come to the hands of his representatives as such or belong to the representatives in their own right, can be and ought to be decided under section 244 (c), and not by separate suit.

CLAIMS under sections 244 and 278 of the Code of Civil Procedure. The claim was made in Original Suit No. 51 of 1893 in which a decree had been obtained against one Narayana Payan, since deceased. One of the questions which arose for determination was whether the improvements on the property belonged exclusively to the deceased Narayana Payan or to the whole family jointly. The Acting District Judge dismissed the petition, and ordered the property to be sold in due course.

Petitioner preferred this appeal.

J. L. Rosario for appellants.

V. Ryrn Nambiar for respondents.

JUDGMENT.—We overrule the preliminary objection. The appellants were joined as legal representatives of the deceased judgment-debtor, and the question raised in execution proceedings is whether the improvements on the land which were attached in execution are the property of the deceased which has come into the hands of his representatives as such, or whether they belong to appellants in their own right. With reference to section 234, Civil

* Appeals against the orders Nos. 13 and 14 of 1902, presented against the orders of N. S. Brodie, District Judge of North Malabar, dated the 6th December 1901, on Civil Miscellaneous Petitions Nos. 491 and 375 of 1901.

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Procedure Code, this question can be, and ought to be, decided only under section 244 (c) and not by separate suit (*Chowdry Wapad Ali v. Mussamul Jumma*(1)). The cases cited by the respondent (*Ramanathan Cheltiar v. Leevai Marakayar*(2), *Kayyankot Kunhacha v. Kayyankot Kannan*(3)) have no bearing on the question.

On the merits, we find no sufficient ground for differing from the District Judge's conclusion that the improvements were the self-acquisition of the deceased member of the family and as such is liable in the hands of the appellants to satisfy the decree.

The appeals are dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Subrahmanya Ayyar and Mr. Justice Davies.

SRESHAGIRI ROW (PLAINTIFF), APPELLANT,

v.

NAWAB ASKUR JUNG AFTAB DOWLA (DEFENDANT),

RESPONDENT.*

Letters Patent—Art. 15—Order on a plaintiff to give security for defendant's costs—Judgment—Appeal.

An order, passed on the Original Side of the Madras High Court, on a plaintiff to give security for the costs of a suit, under section 380 of the Code of Civil Procedure, is a judgment, within the meaning of article 15 of the Letters Patent, and an appeal lies therefrom.

The term "judgment," in that article, includes any order which determines some right or liability of the parties before the Court.

ORDER on a plaintiff to furnish security for costs. Plaintiff instituted a suit on the Original Side of the High Court, Madras, whereupon the defendant applied on a Judge's summons for an order on plaintiff to give security for the defendant's costs of the suit. The learned Judge made the order.

Plaintiff preferred this appeal.

(1) 11 B.L.R., 149.

(2) T.L.R., 23 Mad., 195.

(3) S.A. No. 455 of 1900 (unreported).

* Original Side Appeal No. 37 of 1902 presented against the judgment of Mr. Justice Boddam in Original Suit No. 97 of 1902.