

APPASAMI
PILLAI
v.
SOMASUNDRA
MUDALIAR.

of 1901. The petition came on for hearing in the first instance, before the Chief Justice, who made an order refusing to give the leave asked for. Against that order, petitioner preferred this appeal, under article 15 of the Letters Patent.

V. *Krishnasamy Ayyar*, for respondent, took the preliminary objection that no appeal lay under article 15.

C. R. *Tiruvengkatachariar* for appellant.

JUDGMENT.—The respondents take the preliminary objection that no appeal lies under the Letters Patent against an order of a single Judge refusing to allow an appeal *in forma pauperis*. We think the objection is valid. The use of the words “may be allowed to appeal” in section 592, Civil Procedure Code, implies that a discretion is vested in the Judge to allow or disallow the petition. The exercise of such discretion is not a “judgment,” *i.e.*, an adjudication on any right or liability in dispute between the parties to the suit, and unless it is a “judgment” within the meaning of section 15 of the Letters Patent there is no appeal. We think this view is in accordance with the principle underlying the decisions in *Sriramulu v. Ramasam*(1), *Venkatarama Ayyar v. Madalai Ammal*(2), and *Srimantu Raja Durya Naidu v. Srimantu Raja Mallikarjuna Naidu*(3).

We therefore dismiss this appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Boddam.

THOMAS SOUZA (PLAINTIFF—DEGREE-HOLDER), APPELLANT,

v.

GULAM MOIDIN BEARI AND ANOTHER (JUDGMENT-DEBTOR),
RESPONDENTS.*

Specific Relief Act—1 of 1877, s. 9—Decree for possession—Order in execution proceedings—Appeal.

Where a decree for possession of land has been passed in a suit brought under section 9 of the Specific Relief Act, and an order is passed in proceedings in

(1) I.L.R., 22 Mad., 109.

(2) I.L.R., 23 Mad., 169 at p. 170.

(3) I.L.R., 24 Mad., 358.

* Appeal against Appellate Order No. 2 of 1902 passed by J. W. F. Damergue, District Judge of South Canara, in Appeal Suit No. 243 of 1901, presented against the order of T. V. Anantan Nair, District Munsif of Mangalore, in Miscellaneous Petition No. 840 of 1901 (Original Suit No. 248 of 1900).

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execution of that decree, no appeal lies against that order. For section 7 provides that "no appeal shall lie from any order or decree passed in any suit" under that section, and, by the explanation to section 647 of the Code of Civil Procedure, applications for the execution of decrees are proceedings in suits.

PETITION, by a purchaser from a judgment-debtor, praying that the property decreed to the judgment-creditor might not be delivered over to the latter until the sugar-cane crop standing thereon, which petitioner had purchased, had been first removed. Counter-petitioner had sued the judgment-debtor under section 9 of the Specific Relief Act to recover possession of the land on which the crop of sugar-cane was standing, and obtained a decree directing the surrender of the land by the judgment-debtor to counter-petitioner. While the suit was pending, the judgment-debtor sold the crop to petitioner, who, after decree, presented this petition. The District Munsif held that petitioner had no right to object to the delivery of the land to the decree-holder, and rejected the petition. Petitioner appealed to the District Court, when it was objected that no appeal lay against the order, which related to the execution of a decree passed under section 9 of the Specific Relief Act. The District Judge held that section 244 applied to all decrees, and that an appeal lay. On the merits he held that as the crop was not in existence when the plaint was filed, and as the decree made no order as to mesne profits, petitioner was entitled to reap the crop. He allowed the appeal and reversed the District Munsif's order.

Against that order the decree-holder preferred this appeal.

P. R. Sundar Ayyara for appellants.

V. Krishnaswami Ayyar and *K. Narayana Rau* for respondents.

JUDGMENT.—We are of opinion that the decree of the District Judge is wrong and must be reversed. The suit was brought under section 9 of the Specific Relief Act (Act I of 1877). By the last clause of that section "no appeal shall lie from any order or decree passed in any suit under this section," etc. According to the explanation to section 647 of the Civil Procedure Code, applications for execution of decrees are proceedings in suits. This, the Privy Council says, in *Thakar Pershad v. Sheikh Fakirullah*(1), is a mere statement of what was the law. The

(1) L.R., 22 I.A., 44 at p. 50.

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application upon which this decree was passed was an appeal against a decree or order in execution of the decree under section 9 of the Specific Relief Act and therefore there was no appeal.

Again, on the merits it appears to us that the decision is wrong. The plaintiff obtained a decree for possession and was entitled to possession as from the date of the decree at least. At that time the crops were standing and the plaintiff was entitled to possession of the land and what was on it. The land was cultivated by a trespasser, who, after the decree, sold the growing crops to the present applicant. We are unable to discover any right either in law or in equity which can entitle the applicant to an order deferring the handing over of the land to the plaintiff until the growing crops have been gathered by the applicant.

The decree of the District Judge is reversed and that of the District Munsif is restored with costs in this and in the lower Appellate Court.

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Moore.

OFFICIAL ASSIGNEE OF MADRAS (APPELLANT),

v.

MARY DALGAIKINS (PETITIONER), RESPONDENT.*

Provident Funds Act—IX of 1897, s. 4—Insolvent Debtors' Act, 11 & 12 Vict., cap. 21, s. 7—Vesting order—Sum due to an insolvent from a Provident Institution—Right of Official Assignee to claim—Construction of statutes—Distinction between enactments affecting vested rights and those regulating procedure.

A member of a Railway Provident Institution who had made compulsory deposits therein became insolvent and the usual vesting order was made under section 7 of the Act for the Relief of Insolvent Debtors. By the rules of that Institution a member is to be paid, on his retirement from service, the sum of money standing to his credit. At the date of the vesting order, the insolvent had not yet retired from service. Subsequently to the date of the vesting order, but

* Original Side Appeal No. 10 of 1902 presented against the order of the Honorable Mr. Justice Boddam, one of the Commissioners of the Court for the Relief of Insolvent Debtors at Madras, dated 3rd February 1902, made in the matter of the petition and schedule of James E. Dalgairns, an Insolvent Debtor No. 152 of 1896.