

SUBBA-
BAYA REDDI
v.
JAGANNATHA
REDDI.

JUDGMENT.—We are not aware of any authority for the District Judge's view that a suit for illegal detention of property by a village officer purporting to be acting under Madras Act II of 1864 and under the orders of a Tahsildar must be brought against the Secretary of State and cannot be brought against the official in default.

Section 60 of Act II of 1864 contemplates suits against the Collector, and chapter 27 of the Civil Procedure Code contemplates suits against public officers without impleading the Secretary of State and lays down rules in regard to them. Under the general law any servant who commits a tort under the orders of his master is liable to be personally sued.

We must reverse the decree of the District Judge on this preliminary point, and remand the appeal for disposal according to law.

Costs will abide and follow the result.

APPELLATE CIVIL.

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

BOMMANAPATI VEERAPPA (PLAINTIFF), APPELLANT,

v.

CHINTAKUNTA SRINIVASA RAU AND TWO OTHERS (FIRST
DEFENDANT AND SECOND DEFENDANT'S REPRESENTATIVES),
RESPONDENTS.*

*Civil Procedure Code—Act XIV of 1882, s. 244—Suit by assignee of decree for
declaration of validity of assignment—Maintainability.*

A suit lies at the instance of the assignee of a decree for a declaration as to the validity of his assignment. The amendment of section 244 by section 26 of Act VII of 1888 has not taken away this right.

Raman v. Muppil Nayur, (I.L.R., 14 Mad., 478), referred to.

SUIT for a declaration that plaintiff had obtained a valid assignment of a decree. Both of the lower Courts dismissed the suit on

* Second Appeal No. 1261 of 1900, presented against the decree of T. M. Horsfall, District Judge of Bellary, in Appeal Suit No. 142 of 1899, presented against the decree of V. Suryanarayana Garu, District Munsif of Bellary, in Original Suit No. 157 of 1899.

a preliminary point not material to the present report. Plaintiff preferred this second appeal.

C. Ramachandra Rau Saheb for appellant.

P. S. Sivaswami Ayyar for first respondent.

C. Balarama Rau for second and third respondents.

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JUDGMENT.—Before the amendment of section 244 of the Civil Procedure Code by section 26 of Act VII of 1888 it had been held that a suit, like the present, by an assignee of a decree for a declaration that he had obtained a valid assignment of the decree might properly be brought (*Raman v. Muppl Nayyar*(1)). We do not think that the alteration of the section made in 1888 was intended to take away that right. The amendment was made in order to settle the conflict of decisions as to whether an appeal would lie against an order made under section 232.

If the amendment had been made by an addition to section 232 of the Civil Procedure Code, as it might logically have been, no appeal would lie; but by introducing the amendment into section 244 an appeal lies as against a decree, even in a case in which the question is not between the parties to the suit or their representatives, but only between the decree-holder and a person claiming as his assignee. It would be unreasonable to construe the phrase "and not by a separate suit" in the first sentence of section 244 as applicable to the question referred to in the amendment. The judgment-debtor, as a person interested in the question as to *factum* and validity of the assignment, is a proper party at any rate under section 32 to a suit in which such declaration is sought for.

The Court passing such a decree should simply decide as to the *factum* and validity of the assignment, and should not declare that the assignee is entitled to execute the decree, that being, under section 232, a matter within the province and discretion of the Court which has to execute the decree.

It is unnecessary to decide in this suit whether the Court which has to execute the assigned decree can allow the plaintiff in this suit to execute that decree, notwithstanding that his former application was rejected under section 232 for reasons which do not appear on the record of this case. It may be that the plaintiff is not entitled to the alternative relief which he seeks against the second defendant, but that is no ground for rejecting the suit

(1) I.L.R., 14 Mad., 478.

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altogether, as the lower Courts have done. Both Courts having disposed of the suit on a preliminary point we set aside their decrees and remand the suit to the Court of First Instance for disposal according to law, with reference to the observations made above.

Costs hitherto incurred will be costs in the suit.

APPELLATE CIVIL.

Before Mr. Justice Davies and Mr. Justice Moore.

SRI SRI SRI VIKRAMADEO MAHARAJULUM GARU,

APPELLANT,

v.

SRI NELADEVI PATTAMADHADEVI GARU AND ANOTHER,

RESPONDENTS.*

*Agency Court at Vizagapatam—Act XXIV of 1839—Order in execution petition—
Appeal—Review—Decree—Agency Rule No. XXXI.*

There is no appeal to the High Court against an order passed in execution proceedings in the Agency Court at Vizagapatam :

Semle, that the remedy open to a party aggrieved by such an order is by petition under Rule No. XXXI of the Agency Rules for Ganjam and Vizagapatam.

An order passed by the Agent in execution proceedings under the Agency Rules is not a "decree" within the meaning of those rules, and is not subject to review by the High Court.

EXECUTION PETITION. Petitioner presented an execution petition in the Court of the Governor's Agent at Vizagapatam, on which an order was passed. Against that order petitioner now preferred this appeal. A review petition was also preferred.

V. Krishnaswami Ayyar, C. R. Thiruvenkatachariar and V. Ramesam for appellant and petitioner.

P. R. Sundra Ayyar for respondent.

JUDGMENT [in the appeal].—No provision is made in the rules for an appeal against an order in execution passed by the Agent. We apprehend that the remedy open to a party deeming himself aggrieved in a matter of execution is by petition against the

* Appeal against the decree of the Court of the Agent to the Governor at Vizagapatam in Miscellaneous Appeal No. 1 of 1900 (Civil Miscellaneous Petition No. 10 of 1899).