

APPELLATE CIVIL.

Before Mr. Justice Bhashyam Ayyangar.

1902.
March 25.

CHIATHOTH KUNHI PAKKI, PETITIONER,

v.

SAIDINDAVIDE KUNHAMNAD, RESPONDENT.*

Civil Procedure Code—Act XIV of 1882, ss. 223, 336—Surety for presentation of insolvency petition by judgment-debtor—Failure to apply—Transfer of decree—Application by transferee for decree to be sent to another Court for execution against judgment-debtor and surety.

A transferee decree-holder is entitled to apply under section 223 of the Code of Civil Procedure, to the Court which passed the decree, to send it for execution to another Court; and where a person has become surety for the judgment-debtor, under section 336, and the judgment-debtor has failed to apply to be declared an insolvent, the transferee-decree-holder is entitled to have his decree sent for execution as against the surety as well as against the judgment-debtor, if his transfer has been recognized.

PETITION to forward a decree for execution to another Court. Petitioner had obtained an assignment of a decree and now petitioned the District Court of Malabar, in Small Cause Suit No. 156 of 1898, under sections 223 and 232 of the Code of Civil Procedure, that notice might be sent to the decree-holder, to the defendant and to the surety, that the transfer might be recognized and that the decree might be transmitted to the Court of the District Munsif of Tellicherry for execution. The District Judge, on 16th August 1901, passed the following order: "Recognize and send but not as against third defendant,"—the person therein referred to as "third defendant" being a surety under section 336 of the Code of Civil Procedure. Further facts bearing on the present application appear from the judgment.

Petitioner preferred this civil revision petition.

J. L. Rosario for petitioner.

Ryru Nambiyar for respondent.

* Civil Revision Petition No. 390 of 1901, presented under section 25 of Act IX of 1887, praying the High Court to revise the order of the District Court of North Malabar, dated 16th August 1891, in Small Cause Miscellaneous Petition No. 480 of 1901.

JUDGMENT.—The definition of a decree-holder includes any person to whom such decree has been transferred and such person therefore is entitled to apply, under section 223, Civil Procedure Code, to the Court which passed the decree, to send it for execution to another Court. In the present case, on an application made by the transferee, the District Judge who passed the decree ordered notices to be issued to the parties concerned under section 232, Civil Procedure Code. On the 16th August 1901, the District Judge passed the order now sought to be revised, viz., “Recognize and send but not as against the third defendant.” Both parties represent that this means that the transfer is recognized and the decree is to be sent to the District Munsif’s Court of Tellicherry to be executed against the judgment-debtor alone but not against the surety who is therein referred to as third defendant. The person styled as third defendant became surety under section 336, Civil Procedure Code, and on the failure of the judgment-debtor to apply to be declared an insolvent, the original decree-holder applied in M. R. No. 799 of 1899 for realizing the security given under section 336 by executing the decree against the surety, and, after giving notice to the surety, the District Judge passed an order on the 20th September 1899 directing the issue of a warrant for his arrest in execution of the decree against the surety under section 253, Civil Procedure Code. The amin returned the warrant on the 27th September 1899 reporting that the surety was not found. Nothing more appears to have been done since with reference to M.P. No. 799 of 1899, and the present application is made by the transferee of the decree praying that the decree may be sent for execution to the District Munsif’s Court of Tellicherry. As the District Judge saw no objection to recognize the assignment and send the decree for execution to another Court as prayed for, he was not warranted in limiting its execution against the judgment-debtor alone. By order passed on M.P. No. 799 of 1899, he already directed the security to be realized under section 336 by allowing execution to proceed against the surety under section 253, instead of committing the judgment-debtor to jail in execution of the decree. The order of the Judge, therefore, so far as it directs that the decree be not executed against the surety, the third defendant is set aside, and he is directed to send the decree for execution to the District Munsif’s Court of Tellicherry in the manner prescribed by section 224 accompanied, under clause (c)

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of that section, with copies of the orders already passed for the execution of the decree.

The respondent will pay the costs of the petitioner in this Court.

APPELLATE CIVIL.

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

PICHUVAYENGAR (PLAINTIFF), APPELLANT,

v.

G. T. OLIVER AND ANOTHER (DEPENDANTS), RESPONDENTS.*

Rent Recovery Act—(Madras) VIII of 1865, s. 14—Demand by land-holder of an amount in excess of rent actually due by tenant—Non-compliance with demand—Attachment and sale in consequence of non-compliance—Legality.

A land-holder made a demand on his tenant for payment of a sum in excess of what was in fact due in respect of rent. The demand was not complied with, and, as a consequence of such non-compliance, the holding was attached and sold :

Held, that inasmuch as the sale had been held by reason of a demand which was not shown to be correct, it must be set aside.

SUIT for a declaration that an attachment of certain land by first defendant was invalid, and to set aside a sale of it by first defendant and second defendant. The attachment had been made, by first defendant, for arrears of rent which he alleged to be due. The evidence showed (as found by the High Court) that the amount payable by plaintiff to first defendant could not exceed Rs. 33-8-0. A demand was, however, made for payment of a larger sum, namely, Rs. 52--9-5. Plaintiff did not comply with this demand, and the land was sold in consequence of his non-compliance, though a temporary injunction had been obtained staying the sale. Plaintiff now sued to set aside that

* Second Appeal No. 1267 of 1900, presented against the decree of G. F. T. Power, District Judge of Tanjore, in Appeal Suit No. 666 of 1899 presented against the decree of R. Annaswami Ayyar, District Munsif of Tiruvadi, in Original Suit No. 288 of 1898.