

APPELLATE CIVIL.

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

THE ARYAN BANK OF VIZAGAPATAM (UNLIMITED)
(PLAINTIFF), APPELLANT,

1902.
April 15.

v.

KAMMA VENKATA NARASAYYAMMA GARU
(FIRST DEFENDANT), RESPONDENT.*

Civil Procedure Code—Act XIV of 1882, s. 244—Order by High Court directing District Court to take account of amount due under mortgage—Order by District Court declaring amount due—Appeal.

The High Court, by its decree, directed a District Court to take an account of the amount due to a decree-holder under a mortgage. The District Court accordingly took the account and passed an order declaring, in Court, under section 88 of the Transfer of Property Act, the amount so due. Against that order the decree-holder appealed to the High Court, when the objection was raised that no appeal lay:

Held, that the order appealed against was one falling under section 244 (c) of the Code of Civil Procedure and an appeal lay.

By an order, dated 30th August 1901, the District Judge of Vizagapatam declared, in Court, under section 88 of the Transfer of Property Act, the amount due, up to a certain date, to a decree-holder for principal and interest on a mortgage, on taking an account as directed by the High Court in its decree in Original Suit No. 37 of 1896, and Pauper Appeal No. 5 of 1900. Against that order, the decree-holder preferred this appeal.

P. R. Sundara Ayyar, for respondent, took the preliminary objection that no appeal lay.

T. Rungachariar for appellant.

JUDGMENT.—This is an appeal by the decree-holder in Original Suit No. 37 of 1896 (Pauper Appeal No. 5 of 1900 on the file of the High Court) against the order of the District Judge of Vizagapatam, dated 30th August 1901, declaring in Court, under section 88 of the Transfer of Property Act, the amount due to the decree-holder for principal and interest on the mortgage up to 7th August 1901, on taking an account as directed by the decree of this Court,

* Appeal against the Order No. 164 of 1901, presented against the order of M. D. Bell, District Judge of Vizagapatam, dated 30th August 1901, in Original Suit No. 37 of 1896 (Pauper Appeal No. 5 of 1900 on the file of the High Court).

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dated 7th February 1901, in the above appeal. The respondent's pleader raises the preliminary objection that no appeal lies to this Court against the said order and he admits that, if this objection be well founded, the account itself should have been taken in this Court and the order fixing the amount should have been declared in Court by this Court on the 30th of August 1901. In our opinion the objection is not well founded and the order appealed against is really one falling under section 244 (c) of the Civil Procedure Code being a question arising between the parties to the suit in which the decree was passed on appeal by this Court and relating to the execution of that decree. Following the decision of this Court in the recent Full Bench cases, we hold that a decree for sale passed under section 88 of the Transfer of Property Act is the final decree in the suit and that all proceedings taken subsequent to that decree for the purpose of enforcing and working out such decree are proceedings in execution of that decree. A decree for sale passed under that section may declare the amount due on the mortgage at the date of such decree or direct, as was done in this case, that an account be taken of what will be due to the plaintiff for principal and interest on the mortgage on a future day, which is to be fixed by the decree itself. In this case the 7th of August 1901 was the day so fixed by the appellate decree of this Court, dated 7th of February 1901; and the decree further provided that the amount that might be declared due on the 30th of August 1901 should be paid on or before the 31st of December 1901. In our opinion an application which the decree-holder may make for taking the account and declaring the amount which may be found due on the taking of such account is an application to enforce that portion of the decree within the meaning of section 230 of the Code of Civil Procedure; and that being so the decree-holder is entitled to apply under section 583 to the Court which passed the decree against which the appeal was preferred to the High Court. The Court which is to declare the amount due by virtue of the appellate decree is, therefore, the Court which passed the original decree. In this view the order in question falls under section 244 (c) and is analogous to orders under clauses (a) and (b) of section 244 fixing the amount of mesne profits or interest payable under a decree.

[The judgment dealt with the items of account.]