

SUNDARA  
 AYYAR, J.

PERRAJU  
 GARU  
 v.

SUBBARA-  
 YUDU.

Courts Act applies to a suit for land cess or village cess. This question has been fully dealt with recently by a Bench of this Court of which I was a member. See Second Appeal No. 680 of 1910.

In the result I set aside the decision of the lower Court and direct that the plaint be returned for presentation to the proper Court.

*In C.R.P. Nos. 443 to 461 of 1910.*

JUDGMENT.—For the reasons given in Civil Revision Petition No. 442 of 1910, the District Munsif had no jurisdiction to try these suits. The judgments of the Munsif are reversed and the plaints returned for presentation to the proper Court.

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## APPELLATE CIVIL.

*Before Mr. Justice Abdur Rahim and Mr. Justice Sundara Ayyar.*

SRI SRI SRI VIKRAMA DEO (MAHARAJAH OF  
 JEYPORE), (PLAINTIFF), PETITIONER,

v.

RAGHUNATHA PATRO AND TWO OTHERS (DEFENDANTS),  
 RESPONDENTS.\*

*Ganjam and Vizagapatam Agency Rules—Agent's order under sec. XVIII—Maintainability of petition to High Court under Rule XX—Interference of High Court in proper cases—Section 244, bar by, who can set up.*

A petition lies to the High Court under Rule XX of the Ganjam and Vizagapatam Agency Rules, even though the Agent acted under Rule XVIII in dismissing an appeal.

*Jagannadha v. Gopanna*, [(1883) I.L.R., 16 Mad., 229], dissented from.

An order of the Agent summarily dismissing an appeal is a decree as it disposes of the rights of the parties, and under Rule XX the High Court may in a proper case (as here, where the Agent gives no reasons for dismissal) direct the Agent to review his judgment.

A person who was not a party to a previous suit cannot set up the effect of an order in execution in that suit as a bar to a suit against him.

*Quære*, whether, when Section 244, Civil Procedure Code, does not apply to Agency Tracts, the principle of that section applies.

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\* Civil Miscellaneous Petition No. 2479 of 1909.

APPLICATION under Rule XX of the Ganjam and Vizagapatam Agency Rules praying that, in the circumstances stated therein, the High Court will be pleased to direct F. C. PARSONS, the Agent to the Governor, Vizagapatam, to review his order, dated the 17th September 1909, in the appeal preferred to him against the following order in Original Suit No. 20 of 1908 on the file of H. H. F. M. TYLER, the Special Assistant Agent, Koraput Division :—

ABDUR  
RAHIM AND  
SUNDARA  
AYYAR, JJ.  
SRI SRI SRI  
VIKRAMA DEO  
v.  
RAGHUNATHA  
PATRO.

‘This is a suit brought by the Maharajah of Jeypore against Bhagavan Sing Lal and two others, to obtain a declaration that a certain tope is in the possession of the defendants Nos. 1 and 2, and liable to attachment in execution of the decree of this Court in Original Suit No. 1 of 1900. The first issue framed was whether the plaintiff's suit is barred by the order of this Court in Execution Proceedings No. 5 of 1906, dated 19th June 1907. As this issue was decided in favour of defendants, it is not necessary to refer to the remaining issues. In Execution Proceedings No. 5 of 1906, this Court held that the tope which forms the subject of the present suit, was not liable to attachment by the present plaintiff, on the ground that it was not in the possession of the judgment-debtors. This order has never been appealed against. The order was undoubtedly passed under section 244, Civil Procedure Code, though it is not so specifically stated. The vakil for the plaintiff urges that the order was passed under section 280, Civil Procedure Code, and that the present suit is brought under section 283, Civil Procedure Code. From the wording of the section 278, it is clear that section 280 cannot apply as the parties to the Execution Proceedings were the same as in the original suit, or their representatives in interest. Sections 278-283 only apply where a claim to attached property has been made by a person who was not a party to the original suit. On these grounds I hold that section 244, Civil Procedure Code, applies to the present suit, and that it is not therefore maintainable. I accordingly dismiss plaintiff's suit. The plaintiff will bear the costs of both parties.’

The Agent to the Governor, Vizagapatam, would not admit this appeal.

The plaintiff appealed to the High Court.

*C. R. Thiruvankatachariar* and *T. Narasimha Charariar* for the petitioner.

*B. Narasimha Row* for the respondents.

ABDUR  
RAHIM AND  
SUNDARA  
AYYAR, JJ.  
SRI SRI SRI  
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ORDER.—We do not think there is force in the preliminary objection that no petition lies to the High Court under Rule XX of the Ganjam and Vizagapatam Agency rules on the ground that the Agent has acted under Rule XVIII. In this contention the learned pleader for the respondent is no doubt supported by *Jagannatha v. Gopannā*(1) but with all respect to the learned Judges who decided that case we are unable to accept that decision as correct. They give no reasons. Rule XVIII only says that the Agent may summarily dismiss an appeal without issuing notice to the respondent. But such an order of dismissal as it disposes of the rights of the parties would be a decree and Rule XX says that the High Court in a proper case may direct the Agent to review his judgment. We hold that we have jurisdiction to entertain this petition.

The Agent does not give any reasons in support of the order of dismissal. But the Special Assistant Agent who originally heard the suit dismissed it on the ground that section 244 of the Civil Procedure Code of 1882 was a bar to the plaintiff's claim. The section itself is not in force in this agency. But supposing that the principle of that section could be applied which we do not decide, the third defendant whose claim was upheld in execution proceedings was not a party to the suit and therefore he could not invoke the principle of that section as a bar to the plaintiff's suit.

We set aside the order of the Agent and direct him to review his judgment in the light of the above observations.

Costs will abide the result.

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(1) (1893) I.L.R., 16 Mad., 229.