

PONNAMMAL  
 v.  
 RAMAMIRDA  
 AIYAR.

WALLIS, C.J.,  
 AYLING, AND  
 SEFHAGIRI  
 AYYAR, JJ.

of different causes of action, even if they arise out of the same transactions, and point out that the provision that an obligation and a collateral security for its performance should be deemed to constitute but one cause of action is a substantive enactment making what would otherwise be two independent causes of action one cause of action for the purposes of the section. This shows that the distinction between different causes of action must be strictly observed. For the foregoing reasons and following the decisions quoted in the reference, *Monohur Lall v. Gouri Sunkur*(1), *Tirupati v. Narasimha*(2), *Lalessor Babui v. Janki Bibi*(3) and *Gutta Saramma v. Maganti Raminedu*(4), we answer the reference in the affirmative.

K. R.

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## APPELLATE CIVIL.

*Before Mr. Justice Sadasiva Ayyar and Mr. Justice Spencer.*

1914.  
 January 7.

L. KRISHNA BHOOPATHI DEO GARU (DEFENDANT),  
 APPELLANT,

v.

THE HON'BLE MR. SRI MIRZA SRI PASUPATI  
 VIJIARAMA GAJAPATHIRAJA MAHARAJA MANYA  
 SULTAN BAHADUR GARU, RAJA OF VIZIANAGARAM  
 AND ANOTHER (PLAINTIFF AND TRANSFEREE—DECREE-HOLDER),  
 RESPONDENT.\*

*Civil Procedure Code (Act V of 1908), O. XLV, rr. 15 and 16; O. XXI, r. 16; ss. 37, 38 and 50—Privy Council, order of, transmitted to the original Court—Execution—Application to the original Court—Application by transferee of the decree—Competency of the original Court to entertain application—Power-of-Attorney, construction of.*

Where an order of His Majesty in Council was transmitted under Order XLV, rule 15 of the Civil Procedure Code, by the High Court to the District Court as the Court which passed the first decree, the latter Court has jurisdiction to entertain an application made by an assignee of the decree under Order XXI, rule 16, of the Civil Procedure Code, to recognise the assignment and to allow him to execute the decree.

(1) (1883) I.L.R., 9 Cal., 283.

(2) (1888) I.L.R., 11 Mad., 210.

(3) (1892) I.L.R., 19 Cal., 615.

(4) (1908) I.L.R., 31 Mad., 405.

\* Civil Miscellaneous Appeal No. 145 of 1913.

It is established law that a Power-of-Attorney must be construed strictly. When an agent has a general Power-of-Attorney to act in some business or series of transactions, he may be assumed to have all usual powers, including the power to transfer decrees.

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*Palaniappa Chettiar v. Arunachella Chettiar* (1912) 23 M.L.J., 595, distinguished.

APPEAL against the order of A. L. HANNAY, the District Judge of Vizagapatam, in Execution Petition No. 3 of 1913, in Original Suit No. 7 of 1899 (Privy Council Appeal No. 77 of 1899).

The facts of the case appear from the judgment of SADASIVA AYYAR, J.

*T. Rangachariyar* for *K. Srinivasa Ayyangar, B. Narasimha Rao and V. Ramesam* for the appellant.

*S. Srinivasa Ayyangar, P. Narayanamurthi and P. Somasundaram* for the respondents.

SPENCER, J.—Two grounds of appeal are pressed. It is contended (1) that the order of the District Court recognising the transfer of the decree by the Manager and Agent of the estate of the Maharaja of Vizianagaram in favour of the second respondent and allowing the latter to execute the decree was an order made without jurisdiction, the proper Court which should pass such an order in a case, which had gone up to the Privy Council in appeal from a decree of the High Court which confirmed the original decree of the District Court, being the High Court; (2) that Mr. Fowler as Attorney of the Maharaja was not expressly authorised under the Power, which is Exhibit A, to transfer decrees obtained by his principal for less or indeed for any amounts.

SPENCER, J.

No direct authority has been quoted in support of the first proposition. It is sought to be inferred from the language of Order XLV, rules 15 and 16 read along with sections 38, 39 and 42, Civil Procedure Code. Reference has also been made in the arguments to the decision in *Swaminatha Aiyar v. Vaidyanatha Sastri* (1), in which it was held that an application under section 234 of the Code of 1882 (corresponding to section 50 of the present Code) to execute a decree against the legal representatives of a deceased judgment-debtor must be made to the Court which passed the decree and not to the Court to which it has been

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transferred for execution; and the decision in *Hurrish Chunder Chowdhry v. Kalisunderi Debi*(1) is cited as an instance of the High Court disposing of a similar question arising in the execution of an order of Her Majesty in Council. But in my opinion the position of an original Court, which itself passed a decree against which appeals have been carried up to the Privy Council, when it receives the order of His Majesty in Council transmitted to it by the High Court, is not to be compared with the position of a Court to which the decree of another Court has been transferred for execution. They are totally different positions.

Order XXI, rule 16, permits a transferee of a decree to apply for execution of the decree to the Court which passed it. Section 38 permits a decree to be executed either by the Court which passed it or by the Court to which it is sent for execution. Section 37 defines the expression "Court which passed a decree" as including the Court of first instance where there has been an appeal. Similar words are used in Order XLV, rule 15, where it is provided that the Court from which an appeal to His Majesty has been preferred shall transmit the order of His Majesty in Council to the Court *which passed the first decree* appealed from. The act of the High Court in receiving and filing an order of the Privy Council is a purely ministerial function (*vide* observation in *Premalal Mullick v. Sumbhoonath Roy*(2). It is so provided that the High Court should act as an intermediary for carrying out the orders of His Majesty in Council, because the Privy Council does not deal direct with subordinate Courts.

In the present instance the petition of the transferee decree-holder to transmit the order of the Privy Council with a prayer for a direction to bring him on record in that capacity came before a Bench of this Court, and the learned Judges who disposed of his application (the Chief Justice being one of the Bench) expressly refused to make any directions. Without treating him as having no *locus standi* to make the application they transmitted the order, without prejudice to his right to take and the original decree-holder's right to give an assignment of the decree in question.

In *Hurrish Chunder Chowdhry v. Kalisunderi Debi*(1) the question was not one of recognising a transfer of a decree but

(1) (1883) I.L.R., 9 Calc., 482.

(2) (1895) I.L.R., 22 Calc., 960 at p. 971.

whether one of two co-plaintiffs ought to be permitted to execute a decree without the concurrence of the other plaintiff. Their Lordships of the Privy Council refrained from deciding whether the learned High Court Judge usurped a jurisdiction which did not belong to him, although they were inclined to think he had not done so. His order was set aside on other grounds, namely, that it was erroneous to suppose that a decree can only be executed as a whole and not partly by one of the plaintiffs.

I therefore find nothing irregular or contrary to law in the action of the District Court in permitting the transferee to execute the decree, nor has the original decrec-holder raised any objection to his doing so.

In support of the second contention we have been referred to *Palaniappa Chettiar v. Arunachella Chettiar*(1) and *contra* to *Venkataramana Iyer v. Narasinga Row*(2).

Every document must be construed with reference to its particular terms, and differently worded documents afford but little assistance for correctly construing the document concerned in this case. We have referred to the power-of-attorney concerned in *Palaniappa Chettiar v. Arunachella Chettiar*(1) and we find that the scope of the agent's powers was far more limited than that of the powers conferred under Exhibit A. The learned Judges who decided that case observed that there was 'no clause of a comprehensive character which would show that the principal intended to confer plenary powers on his attorney, to deal with all properties and rights belonging to him.' While it is true, as laid down in that case, that established law requires a power-of-attorney to be construed strictly, it is also correct to hold that when an agent has a general power-of-attorney to act in some business or series of transactions he may be assumed to have all usual powers.

I feel no doubt that the words in Exhibit A "to conduct and manage all other the estate property, moneys, affairs and concerns of the zamindari . . . in all respects as fully and absolutely as the principal himself is empowered to do and (subject as aforesaid) to do, perform and carry out all such acts and deeds and things whatsoever as may be considered requisite for the above purposes as amply and effectually as the principal could do

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(1) (1912) 23 M.L.J., 595,

(2) (1913) M.W.N., 72,

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in his own proper person if these presents had not been executed” do confer on the Maharaja’s manager such plenary powers as would include the transfer for a proper purpose to another person of decrees obtained in the name of the Maharaja himself, apart from other words which occur later in the same document.

SPENCER, J. I would therefore dismiss this appeal with costs.

SADASIVA  
AYYAR, J.

SADASIVA AYYAR, J.—I entirely agree with the judgment just now pronounced by my learned brother. The appellant’s wakil relied on the close similarity between the terms of Order XLV, rule 16, and the terms of the last sentence of section 42 of the Civil Procedure Code. Order XLV, rule 16, says that orders in execution made by the Court which executes the order of His Majesty in Council “shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the execution of its own decrees.” The last sentence of section 42 of the Civil Procedure Code states that “the orders of a Court executing a decree sent to it for execution by another Court shall be subject to the same rules in respect of appeal as if the decrees had been passed by itself.” On this similarity of wording it was argued that just as a Court to which the decree of another Court is sent for execution, cannot entertain applications under Order XXI, rule 16, or section 50, clause (1), so even the Court of first instance whose decision ultimately went to the Privy Council, could not entertain such applications because His Majesty’s order had to be sent to it for execution by the High Court. I do not think that this argument is sound as it ignores, as pointed out by my learned brother, the principle underlying section 37 of the Code which defines the expression “the Court which passed the decree” as including the Court of first instance so far as the powers of that Court relating to execution of the decrees passed by the Appellate Courts are concerned.

As regards the construction of the Power-of-Attorney, Exhibit A, I think that the power to manage a big zamindari estate must include the power to transfer for a reasonable consideration a decree amount due to the estate. Clause 24 of the Power-of-Attorney, Exhibit A, confers, in my opinion, on the manager the power to execute deeds and conveyances necessary for the purpose of effectuating such transfers as are incidental to the business of estate management.

Again, as regards the decision in *Palaniappa Chettiar v. Arunachella Chettiar* (1), the principal himself in that case repudiated the act of his agent as beyond the scope of his authority, whereas in the present case, the principal by his conduct ratified the act of his agent (see paragraph 10 of the lower Court's judgment) and in fact, it was not denied that the principal has received the purchase money for the transfer from his agent's transferee and consented to the transferee executing the decree.

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I, therefore, concur in dismissing the appeal with costs.

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## APPELLATE CIVIL.

*Before Mr. Justice Sadasiva Ayyar and Mr. Justice Spencer.*

ANNAMALAI VELAN AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

MURUGAPPA VELAN AND EIGHTY-TWO OTHERS (DEFENDANTS),  
RESPONDENTS.\*

1914.  
January  
19 and 27.

*Limitation Act (IX of 1908), sec. 22, art. 12, cl. (b)—Madras Rent Recovery Act (VIII of 1865), ss. 33, 35, 39 and 40—Sale for arrears of rent—Sale of kudivaram right—Suit to set aside sale—Parties to the suit—Purchaser, necessary party—Receiver of melvaramdars, added as supplemental defendant—Lapse of one year—Suit not barred—Execution sales—Proceedings to set aside—Decree-holder, necessary party—Civil Procedure Code (Act V of 1908), O. XXI, rr. 90, 81 and 93.*

In a suit instituted under the Madras Rent Recovery Act, by the owners of the kudivaram right in certain lands to set aside a rent-sale of the kudivaram right the purchaser at the rent sale and the melvaramdars were originally joined as defendants; but on objection taken by the defendants a receiver appointed on behalf of the melvaramdars was added as a supplemental defendant more than one year after the date of the sale. The defendants thereupon pleaded that the suit was barred by limitation.

*Held*, that in a suit under the Act neither the receiver nor any of the melvaramdars was a necessary party to the suit but only the purchaser at the rent-sale; and that consequently the suit was not barred by limitation under section 22 and article 12, clause (b) of the Limitation Act.

In proceedings under the Civil Procedure Code to set aside a sale in execution of a decree, the decree-holder is a necessary party.

SECOND APPEAL against the decree of F. D. P. OLDFIELD, the District Judge of Tanjore, in Appeal No. 226 of 1909, presented

(1) (1912) 23 M.L.J., 595.

\* Second Appeal No. 1355 of 1909.