

APPELLATE CIVIL—FULL BENCH.

Before *Mr. Justice Ramesam, Mr. Justice Anantakrishna Ayyar*
and *Mr. Justice Cornish.*

KALAGARLA SANKARA MAHADEVA SETTY
(PETITIONER), APPELLANT,

1933,
January 5.

v.

KALAGARLA SANYASAYYA (RESPONDENT),
RESPONDENT.*

Code of Civil Procedure (Act V of 1908), sec. 145, cl. (c)—Judgment-debtor paying decree amount in Court—Surety bond filed in suit under orders of Court thereafter—Principal committing default—Order for execution against surety—Maintainability of, under sec. 145, cl. (c).

In a suit on a mortgage bond a decree was passed and the judgment-debtor deposited the decree amount in Court. On an application by the guardian of the minor plaintiff to withdraw the amount from Court, the Court ordered that the amount may be withdrawn and, after deducting the expenses, the remaining amount should be invested in Government promissory notes and deposited in Court and the same should remain in Court till the plaintiff attained his majority. Security was demanded for the due performance of the above-mentioned conditions by the guardian. A surety bond was executed and the amount was allowed to be withdrawn by the guardian who committed default. On an application taken out by the plaintiff after he attained majority for an order directing the surety to deposit the said sum in Court,

held that section 145 of the Code of Civil Procedure applied and an order for execution could be made against the surety.

Kurugodappa v. Soogamma, (1917) I.L.R. 41 Mad. 40, distinguished.

APPEAL against the order of the District Court of Vizagapatam, dated 8th December 1928, in Execution Application No. 321 of 1928 in Original Suit No. 3 of 1913.

* Appeal against Order No. 296 of 1929.

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The appeal originally came on for hearing before JACKSON and MOCKETT JJ., who made the following

ORDER :—

Kurugodappa v. Soogamma(1) seems to cover the case but, as at present advised, we do not see how *Kurugodappa v. Soogamma*(1) can be reconciled with the plain language of section 145. The case should be heard, we think, by a Full Bench.

B. Satyanarayana for appellant.

Y. Suryanarayana and *Kasthuri Seshagiri Rao* for respondent.

The JUDGMENT of the Court was delivered by

RAMESAM J. RAMESAM J.—In this case there is no order by the Court granting leave to the next friend to receive any property on behalf of a minor. Order XXXII, rule 6, does not therefore apply. In this respect the case differs from the decision in *Kurugodappa v. Soogamma*(1).

The question still arises whether section 145 does not apply to the case. Clauses (a) and (b) do not apply. But we think clause (c) applies. It is true that the judgment-debtor has paid the money due from him under the decree into Court and there is no further dispute between the two parties to the suit. But until the money deposited by the judgment-debtor was finally disbursed, there can be “a proceeding consequent” on a suit.

The application by the next friend, in which the order of the Court for converting the money into Government promissory notes was made, is such a proceeding. We think that the conclusion of the learned Judges in *Kurugodappa v. Soogamma*(1) depended on the fact that that was a proceeding under Order XXXII, rule 6, and the observations must be

(1) (1917) I.L.R. 41 Mad. 40.

confined to the actual facts of the case. We are of opinion that section 145 applies and an order for execution against the surety may be made. In *Ko Maung Gyi and others v. Daw Tok*(1) there was no suit or proceeding consequent on the suit.

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RAMESAM J.

We reverse the order of the Court below and remand the matter for fresh disposal according to law. The appellant will have costs of this appeal. Costs in the Court below will abide the result.

G.R.

APPELLATE CIVIL.

*Before Sir Owen Beasley, Kt., Chief Justice, and
Mr. Justice Bardswell.*

APPAJI REDDIAR (RESPONDENT), APPELLANT,

v.

THAILAMMAL (PETITIONER), RESPONDENT.*

1933,
January 24.

Letters Patent (Madras), cl. 15—Judgment—Appeal—Appellant deceased in—Legal representative of—Order directing respondent to be brought on record as—Not a judgment and not an appealable order.

An order directing the respondent in an appeal to be brought on the record as the legal representative of the deceased original appellant is not an appealable order, because it is not a judgment which finally settles the rights of parties but has the effect of allowing litigation which is proceeding to further proceed to a final adjudication.

LETTERS PATENT APPEAL preferred to the High Court under clause 15 of the Letters Patent against the order of JACKSON J., dated 28th November 1929 and made in Civil Miscellaneous Petition No. 5009 of 1928 in Appeal

(1) (1928) I.L.R. 6 Rang. 474.

* Letters Patent Appeal No. 4 of 1930.