

## APPELLATE CIVIL—FULL BENCH.

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

1933,  
January 6.

MUTHALAKKAMMAL (PETITIONER—DEFENDANT), APPELLANT,

v.

NARAPPA REDDIAR (MINOR) BY MOTHER AND NEXT FRIEND  
NAGAMMAL (RESPONDENT—PLAINTIFF), RESPONDENT.\*

*Code of Civil Procedure (Act V of 1908), O. XXXII,  
r. 7—Applicability to execution proceedings.*

Order XXXII, rule 7, of the first Schedule of the Code of  
Civil Procedure (Act V of 1908) applies to execution proceedings.

APPEAL against the order of the Court of the Sub-  
ordinate Judge of Tuticorin, dated 19th February 1929,  
in Execution Application No. 1170 of 1928 in Original  
Suit No. 85 of 1925.

*K. V. Sesha Ayyangar* for appellant.—Sanction of the Court  
is not required for an application by the judgment-debtor under  
Order XXI, rule 2 (2) of the Code of Civil Procedure. Order  
XXXII, rule 7, applies only to agreement or compromise with  
reference to a suit, i.e., a pending suit. The scheme of Order  
XXXII shows that it has application to proceedings in suits  
before decrees are passed except in the case of Order XXXII,  
rule 6 (1) (b), and possibly, rule 12; see *Fani v. Surendra*(1),  
*Rakhal Chandra De v. Mt. Kumudini Debya*(2), *Ram Gulam  
Sahu v. Sham Sahai Das*(3) and *Govindarajulu Naidoo v. Ranga  
Rao*(4). The decisions in *Shaik Davud Rowther v. Paramasami  
Pillai*(5) and *Kancherla Kanakayya v. Mulpuru Kotayya*(6)  
require reconsideration. The language of the rules in Order  
XXXII cannot without considerable strain be construed so as to  
bring execution proceedings within their scope. The reasoning  
in *Arunachalam v. Veerappa Chettiar*(7) about the rules of Order

\* Appeal against Order No. 376 of 1929.

(1) (1921) 35 C.L.J. 9.

(2) A.I.R. 1927 Cal. 930.

(3) (1920) 5 P.L.J. 379.

(4) (1920) 40 M.L.J. 124.

(5) (1916) 31 M.L.J. 207.

(6) (1921) 41 M.L.J. 75.

(7) (1931) I.L.R. 55 Mad. 17 (F.B.).

IX applies *mutatis mutandis* to the rules in Order XXXII. Further, Order XXIII, rule 4, excludes adjustments of execution proceedings from the sphere of Order XXXII, rule 7, also. Again, of the two methods in Order XXIII, rule 3, viz., (i) adjustment by lawful agreement or compromise and (ii) satisfaction in respect of part or whole of the subject-matter of suits, adjustment by agreement or compromise alone is dealt with under rule 7 of Order XXXII. The case of satisfaction is probably meant to be covered by Order XXXII, rule 6. Adjustment to the satisfaction of the decree-holder, which is dealt with under Order XXI, rule 2, does not come under Order XXXII, rules 6 and 7.

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*P. Vedachala Ayyar* and *K. S. Narayana Ayyar* for respondent were not called upon.

The JUDGMENT of the Court was delivered by  
RAMESAM J.—The decision in *Arunachellam Chetty v. Ramesam J. Ramanadhan Chetty and Alamelu Achi*(1) was in accordance with the earlier decision in *Virupakshappa v. Shildappa and Basappa*(2), though the latter decision was not actually cited. In the latter case, JENKINS C.J. and CHANDAVARKAR J. held that proceedings in execution are proceedings in suits and that the compromise of such a proceeding is a compromise with reference to the suit. These decisions were followed in this Court in *Shaik Davud Rowther v. Paramasami Pillai*(3).

In *Fani v. Surendra*(4), the rules of Order XXXII, Schedule I of the Code of Civil Procedure, which were in question, were rules 1, 3 and 11 and the decision did not turn on the applicability of Order XXXII, rule 7. The same remarks apply to *Rakhal Chandra De v. Mt. Kumudini Debya*(5) and *Bansi Dhar v. Md. Suleman*(6). In *Ram Gulam Sahu v. Sham Sahai Das*(7), the learned Judges did not give a final opinion as to the

(1) (1905) I.L.R. 29 Mad. 309.

(2) (1901) I.L.R. 26 Bom. 109.

(3) (1916) 31 M.L.J. 207.

(4) (1921) 35 C.L.J. 9.

(5) A.I.R. 1927 Cal. 930.

(6) A.I.R. 1926 Lah. 490.

(7) (1920) 5 P.L.J. 379.

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applicability of Order XXXII, rule 7, in execution, but held that, if it did not apply, the principles of it would apply. We do not think that the authority of *Arunachellam Chetty v. Ramanadhan Chetty and Alamebi Achi*(1) and *Virupakshappa v. Shiddappa and Basappa*(2) and *Shaik Davud Rowther v. Paramasami Pillai*(3) is shaken by *Arunachalam v. Veerappa Chettiar*(4). It is unnecessary to refer in detail to certain other Madras cases cited by the learned Advocate for the appellant as they relate to transfer of decrees. We are therefore of opinion that Order XXXII, rule 7, Schedule I of the Code of Civil Procedure, applies to execution proceedings.

The learned Advocate for the appellant now applies to us for sanction of the adjustment. The respondent opposes this on the ground that the award and the decree on the award are collusive. The Subordinate Judge will now enquire into the question whether the adjustment is a proper adjustment and dispose of the matter according to law.

Costs will abide the result.

G.R.

(1) (1905) I.L.R. 29 Mad. 309.

(3) (1916) 31 M.L.J. 207.

(2) (1901) I.L.R. 28 Bom. 109.

(4) (1931) I.L.R. 55 Mad. 17 (F.B.).