

## APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao and Mr. Justice Reilly.

S. SRINIVASA AYYAR AND ANOTHER (RESPONDENTS),  
APPELLANTS,

1932,  
August 18.

v.

LAKSHMI AMMAL *alias* YOGAMBAL AMMAL  
(PETITIONER), RESPONDENT.\*

*Execution of decree—Hindu widow—Maintenance of—Decree for, charging items of joint family property, with maintenance awarded—Execution of, by attachment and sale of joint family property not charged by decree—Widow's right of, without exhausting remedy against charged property.*

A decree for maintenance obtained by a Hindu widow against her husband's co-parceners directed the defendants to pay the plaintiff maintenance at a certain rate out of the assets of their joint family and charged some specific items of property with the maintenance awarded.

*Held* that, as the decree provided concurrent remedies, the plaintiff could in execution of her decree attach assets of the joint family other than the charged property before exhausting her remedies against the charged property.

*Per* VENKATASUBBA RAO J.—If the defendants succeed in showing that the plaintiff's application is *mala fide* and oppressive and not made for a legitimate purpose, the Court may, in the exercise of its discretion, refuse the plaintiff's application and compel her to pursue her remedy against the security.

APPEAL against the order dated 6th August 1928 of the Court of the Subordinate Judge of Tinnevely in Execution Petition No. 75 of 1928 in Original Suit No. 2 of 1923 (Appeal Suit No. 236 of 1925 on the file of the High Court).

N. A. Krishna Ayyar for appellants.

C. A. Seshagiri Sastri and S. Panchapagesa Sastri for respondent.

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\* Appeal against Order No. 89 of 1929.

## JUDGMENT.

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VENKATASUBBA RAO J.—The lower Court has made an order allowing execution and the defendants contend that that order is wrong, on the ground that the plaintiff is bound to proceed in the first instance against the properties charged under the decree. The decree sought to be executed is one for maintenance obtained by the plaintiff against her husband's co-parceners. Paragraph 2 directs the defendants to pay the plaintiff maintenance at a certain rate *out of the assets of their joint family* and under paragraph 4 some specific items of property are charged with the maintenance awarded. The plaintiff applied in the lower Court by way of execution for attachment of the defendants' family house—an asset of their joint family but not an item over which the charge was created. The appellants' contention is that the plaintiff should not be permitted, before exhausting her remedies against the security, to attach their other properties. The appeal raises the question whether, in the case of maintenance decrees providing concurrent remedies, there is a rule of law which makes it incumbent on the plaintiff to proceed against the security in the first instance. The analogy of mortgage decrees which has been pressed on us is, in our opinion, inapplicable and no useful purpose will be served by our referring to the cases cited at the Bar. Considerations that apply to decrees obtained by widows for maintenance are different from those that apply to mortgage decrees. The object of charging specific properties with the maintenance awarded to a widow is to safeguard her right and to make it prevail against persons claiming under subsequent transfers; while the decree confers on her this special right, there is no reason to hold that her ordinary right is curtailed while that very decree in terms provides concurrent

remedies. If the defendant succeeds in showing that the plaintiff's application is *mala fide* and oppressive and not made for a legitimate purpose, the Court may, in the exercise of its discretion, refuse the plaintiff's application and compel her to pursue her remedy against the security. But, in the present case, the facts show that, far from the plaintiff's action being *mala fide*, the defendants, who own extensive property, are withholding maintenance with the object of spiting the plaintiff.

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We confirm the lower Court's order and dismiss the appeal with costs.

REILLY J.—I agree. If I may say so with respect, the decree made by the Subordinate Judge and amended by this Court on appeal does not appear to me to have been very happily worded. But I think there is no doubt that the plaintiff (respondent before us) is within her rights as given by that decree in applying for execution in respect of the particular arrears in question in this case against the assets of the joint family other than the charged property.

REILLY J.

A.S.V.