

should be in the form of a bond or that it should be in favour of the Court.

We think that the language of section 145 (a) is wide enough to apply to any contract of suretyship whereby a personal liability has been undertaken for the performance of a decree. The order of the Subordinate Judge directing execution to issue against the appellant was correct, and the appeal must be dismissed with costs.

A.S.V.

ABDUL BAQI'
v.
SUNDARA-
RAMAYYA.

APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao.

GOVINDASWAMI MUDALIAR (RESPONDENT-
DECREE-HOLDER), PETITIONER,

1934,
November 19.

v.

RASU MUDALIAR (PETITIONER), RESPONDENT.*

Indian Registration Act (XVI of 1908), sec. 17 (2) (vi) as amended by the Transfer of Property (Amendment) Supplementary Act, 1929, sec. 10—Application for attachment before judgment—Whether a “proceeding” within the meaning of—Consent order thereon—Exempt from registration.

An application for attachment before judgment is a “proceeding” within the meaning of section 17 (2) (vi) of the Indian Registration Act (XVI of 1908) as amended by section 10 of the Transfer of Property (Amendment) Supplementary Act, 1929; and a consent order thereon is excepted from registration.

PETITION under section 115 of Act V of 1908 praying the High Court to revise the order of the Court of the District Munsif of Shiyali, dated

* Civil Revision Petition No. 490 of 1934.

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19th January 1934 and made in Miscellaneous Application No. 1000 of 1933 (Small Cause Suit No. 18 of 1933, Sub-Court, Mayavaram).

V. Ratnam for petitioner.

K. Bhashyam Ayyangar for *K. Venkataramani* for respondent.

Cur. adv. vult.

JUDGMENT.

The question raised in this case relates to the construction of section 17 (2) (vi) of the Indian Registration Act. Under the clause as it originally stood, "decrees and orders of Courts and awards" were excepted from registration; but by an amendment made by section 10 of the Transfer of Property (Amendment) Supplementary Act, 1929, the following clause was substituted :

"Any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding."

In *Hemanta Kumari Debi v. Midnapur Zamindari Company*(1), the Judicial Committee held, having regard to the wording of Order XXIII, rule 3, of the Code of Civil Procedure, that where a suit is adjusted by a lawful agreement between the parties, the proper course is to recite the agreement in the decree or to annex it as a schedule to the decree, but in either case the operative part of the decree should be confined to the actual subject-matter of the suit; then, turning to the Indian Registration Act of 1908 and considering the meaning of the word "decree" in section 17 (2) (vi), they further held that there was no reason

(1) (1919) I.L.R. 47 Calc. 485; L.R. 46 I.A. 240.

why a limit should be imposed upon the meaning of the word so as to confine it to the operative portion only of the decree, adding :

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“ It may be that as a decree it was incapable of being executed outside the lands of the suit, but that does not prevent it being received in evidence of its contents.” (Page 496.)

The result of this decision is that the entire decree was excepted from registration, that is to say, that part of it which related to the suit as well as that which was extraneous to it ; in other words, for the purpose of the Registration Act, in the case of a consent decree, the expression “ decree ” meant the whole of it—both the operative part and the part relating to matters outside the suit. It was while the law was in this state that the amendment was made.

The first question that arises is, does the consent decree in question comprise immovable property which is the “ subject-matter of the suit ” ? To answer this question, I must first briefly state the facts. Rasu Mudaliar (the respondent) filed Original Suit No. 6 of 1931 for the recovery of a sum of money from the defendants in that suit. On his application certain properties were attached before judgment and notice was directed to the defendants. Both the application and the suit came on for hearing on the 30th January 1931. On that day the parties entered into a compromise and a decree was made embodying its terms. The compromise decree provided for the payment of the amount claimed in three months and created a charge for the sum decreed over the properties that had already been attached. As regards the application, an order was simultaneously made, which ran thus : “ Petition is dismissed.”

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About two years later, Govindaswami Mudaliar (the petitioner) obtained a money decree against the same defendants in Small Cause Suit No. 18 of 1933 and attached the properties already mentioned. Rasu Mudaliar (the respondent) preferred a claim under Order XXI, rule 58, of the Civil Procedure Code, asserting that, by virtue of his compromise decree, he obtained a valid charge over the properties and that his opponent could bring them to sale only subject to his own charge. This contention was upheld by the lower Court.

The first question that arises on these facts, as I have said, is, can it be held that the properties in question are the "subject-matter" of the suit, Original Suit No. 6 of 1931? The respondent's Counsel, in support of his contention that they are, relies upon the decisions that have construed the words "relates to the suit" occurring in Order XXIII, rule 3, of the Civil Procedure Code. In *Joti Kuruwetappa v. Izari Sirusappa*(1), where the relief claimed was for a money decree only but the compromise decree made the amount a charge on the defendant's property, it was held that the compromise was "lawful" within the meaning of section 375 of the Civil Procedure Code of 1882 (corresponding to the present Order XXIII, rule 3) and "related to the suit". In that view, in a subsequent suit filed to enforce the charge, the plaintiff was given a decree. In *Gobinda Chandra Pal v. Dwarka Nath Pal*(2), when in similar circumstances a suit was filed upon a charge, the contention that the compromise decree was void for want of registration was negatived on the ground that it did not offend against the

(1) (1907) I.L.R. 30 Mad. 478.

(2) (1908) I.L.R. 35 Calc. 837.

terms of section 375. These and similar decisions proceeded upon the principle that all terms which form the consideration for the adjustment of the matters in dispute, whether they form the subject-matter of the suit or not, *become related to the suit*. The questions that arise therefore are, is it permissible to construe the words "the subject-matter of the suit" in the Registration Act in the light of the decisions which have interpreted words altogether different, namely, "relates to the suit" occurring in a statute like the Civil Procedure Code? Again, is it a far-fetched inference that the amendment was made with a view to alter the law as laid down in *Hemanta Kumari Debi v. Midnapur Zamindari Company*(1) referred to above? I prefer to leave the questions unanswered, for I think I can rest my judgment on another ground urged in the alternative for the respondent.

The section of the Registration Act refers to both decrees and orders by consent. The order in question must be deemed to have been made both in the suit as well as in the petition for attachment before judgment. The properties had been attached *ex parte* and notice went to the defendants on the petition. Both the suit and the petition were heard together. The defendants could have not only opposed the attachment but could have also claimed compensation, alleging that the attachment was wrongful; but the parties chose to compromise both the suit and the petition. The consent decree made must be deemed to have been as much a decree in the suit as an order in the petition; the use of the word "dismissed" conveys

(1) (1919) I.L.R. 47 Cal. 485; L.R. 46 I.A. 240.

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no more than that the petition was disposed of by the decree made in the suit.

The question then arises, is an application for attachment a "proceeding" within section 17 (2) (vi) of the Registration Act? That question must, in my opinion, be answered in the affirmative. There is no reason why the word should be understood in the restricted sense, as referring only to proceedings in original matters in the nature of suits, such as proceedings in probate and guardianship. It is relevant to note that the Civil Procedure Code treats an attachment before judgment as a "supplemental proceeding" (see the *heading* of Part VI of the Civil Procedure Code). The word "proceeding" is thus defined in Black's Law Dictionary (2nd Edn., page 947) :

" Any application to a Court of justice, however made, for aid in the enforcement of rights, for relief, for redress of injuries, for damages or for any remedial object. "

Stroud points out that the word "proceeding" may mean, according to the context, either "any action" or "any proceeding in the action". (See Stroud's Judicial Dictionary, Vol. III, page 1561). The old section referred to "any decree or order of a Court and any award"; there was nothing to indicate that the word "order" was not intended to apply to interim proceedings.

I am therefore of the opinion that the property in question was the "subject-matter" of a "proceeding" within section 17 (2) (vi) and that the consent order (which, as I have shown, is also, in the circumstances, a consent decree) is excepted from registration. The civil revision petition therefore fails and is dismissed with costs.

K.W.R.