assistance to be gained from the decision in *Sami Aiyar* v. *Ramaswami Chettiar*(1). That was a case of a surety's liability for a debt being merged on the extinction of the debt itself. Here, as we have pointed out, the debt is not extinguished, and we do not see how the judgment-debtor's liability for the debt can be deemed to have been extinguished. The decision of the learned Subordinate Judge appears to us to be correct and this appeal is dismissed with costs.

V.V.C.

APPELLATE CIVIL.

Before Mr. Justice Burn and Mr. Justice Lakshmana Rao.

T. V. A. K. T. ANNAMALAI CHETTIAR (RESPONDENT), APPELLANT,

v.

T. T. K. K. KUMARAPPAN SRIRANGA CHARIAR (APPELLANT), RESPONDENT. *

1936, September 16.

Executing Court—Jurisdiction—Sale of property directed by decree—Disputed questions of fact which, if proved, would take away executing Court's jurisdiction to order—Jurisdiction of executing Court to go into.

When there is a final decree for sale of mortgaged property, it is not permissible for the executing Court to enquire into a plea raised by the judgment-debtor that the property is not liable to be sold on the ground that it is a temple service inam and therefore inalienable, where the allegation of the judgment-debtor that the property is inalienable temple service inam is denied by the decree-holder.

The executing Court has no power to go into disputed questions of fact which, if proved, would take away its jurisdiction to order sale.

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(1) (1922) 44 M.L.J. 171.

* Letters Patent Appeals Nos. 35 and 37 of 1935.

ANNAMALAI CHETTIAR v. SRIRANGA CHARIAR.

Ranga Ayyar v. *Sundararaja Ayyangar*, (1933) 37 L.W. 358, approved.

Raja of Vizianagaram v. *Dantivada Chelliah*, (1904) I.L.R. 28 Mad. 84, and *Raja of Kalahasti* v. *Venkatadri Rao*, (1927) I.L.R. 50 Mad. 897, considered.

Anjaneyalu v. *Sri Venugopala Rice Mill, Ltd.*, (1922) I.L.R. 45 Mad. 620, distinguished.

Krishnamurti v. *Imperial Bank of India*, (1936) I.L.R. 59 Mad. 642, 654, referred to.

APPEALS under Clause 15 of the Letters Patent against the judgments of PANDRANG ROW J., dated 25th January 1935 and passed in (i) Appeal Against Appellate Order No. 52 of 1933 preferred against the order of the District Court of Chittoor in Appeal Suit No. 89 of 1932. Execution Petition No. 708 of 1931 in Original Suit No. 352 of 1928; and (ii) Appeal Against Appellate Order No. 103 of 1933 preferred to the High Court against the order of the District Court of Chittoor in Appeal Suit No. 203 of 1931 preferred against the order of the Court of the Subordinate Judge of Chittoor in Civil Miscellaneous Petition No. 7 of 1931 in Execution Petition No. 82 of 1928 in Original Suit No. 29 of 1927.

K. Rajah Ayyar, *S. V. Venugopalachari* and *S. A. Seshadri Ayyangar* for appellant.

D. Ramaswami Ayyangar for *C. S. Venkatachari* for respondent.

The JUDGMENT of the Court was delivered by

BURN J. BURN J.—There is only one point for decision in these appeals and that may be stated as follows: When there is a final decree for sale of mortgaged property, is it permissible for the executing Court to enquire into a plea raised by the judgment-debtor that the property is not liable to be sold on

the ground that it is a temple service inam and therefore inalienable? The allegation of the judgment-debtor that the property is inalienable temple service inam is denied by the decree-holder. The learned Advocate for the respondent is not able to cite any authority for the proposition that the executing Court in such a case has jurisdiction to enquire into the question of fact whether the land is inalienable or not. Mr. Rajah Ayyar for the appellant in Letters Patent Appeal No. 35 of 1935 has brought to our notice a decision of PAKENHAM WALSH J. in *Ranga Ayyar* v. *Sundararaja Ayyangar*(1) which is exactly in his favour. The learned Advocate for the respondent relies upon *Raja of Vizianagaram* v. *Dantivada Chelliah*(2) and *Raja of Kalahasti* v. *Venkatadri Rao*(3). PAKENHAM WALSH J. dealt with *Raja of Vizianagaram* v. *Dantivada Chelliah*(2) but it does not appear that *Raja of Kalahasti* v. *Venkatadri Rao*(3) was cited before him. The distinction as it appears to us between those two cases and the present case and between those two cases and the case decided by PAKENHAM WALSH J. is that in *Raja of Vizianagaram* v. *Dantivada Chelliah*(2) it was *admitted* that the land was service inam being the emoluments attached to the office of village carpenter. If so, the land was inalienable by reason of section 5 of the Madras Hereditary Village Officers Act (III of 1895). In the case of *Raja of Kalahasti* v. *Venkatadri Rao*(3) there was no dispute about the fact that the land sought to be sold was part of an impartible estate which was inalienable by

(1) (1933) 37 L.W. 358. (2) (1904) I.L.R. 28 Mad. 84.
(3) (1927) I.L.R. 50 Mad. 897.

ANNAMALAI CHETTIAR v. SRIRANGA CHARIAR.

BURN J.

reason of section 6 of the Madras Impartible Estates Act (II of 1904). In the present case, there is no provision of statute law forbidding this alienation, but the learned Advocate for the respondent brought to our notice the decision in *Anjaneyalu* v. *Sri Venugopala Rice Mill, Ltd.*(1). That however is distinguishable from this case, because that was a case in which a village service inam was attached and sought to be sold in execution of a decree for money. PAKENHAM WALSH J. has pointed out that in the case before him, which is precisely similar to the case before us, there is a decree explicitly for the sale of the mortgaged property. The decree on the face of it discloses no want of jurisdiction. There is nothing in the proceedings from which the executing Court can simply take notice that the land is inalienable, and in such a case, as PAKENHAM WALSH J. observes, it is very undesirable to lay down that the executing Court should go behind the decree. The learned Judge observes at page 360:

> "The question therefore in this case is very simple and it is whether, when there is no want of jurisdiction apparent on the face of the decree, the party in execution can raise a disputed point of fact, which, if his contention is true, would have deprived the Court of its jurisdiction to pass a decree in that matter. I am quite clear that there is no authority quoted to this effect and the doctrine would obviously have most disastrous consequences."

We are fully in agreement with this reasoning which appears to us to be decisive. The learned Advocate for the respondent has brought to our notice that there are many cases in which the Court executing a decree has been held to have

(1) (1922) I.L.R. 45 Mad. 620.

power to enquire into the validity of the decree, for example, cases in which it is alleged that a decree has been passed against a dead person. We are not disposed to extend the principle to any cases outside the limits within which the principle has hitherto been confined. As the learned Officiating Chief Justice has observed in *Krishnamurthi* v. *Imperial Bank of India*(1):

"Even the Judges who wished to concede to the executing Court power to go behind the decree have used language to indicate that that power should be circumscribed and kept within the narrowest possible limits. 'It is against public policy and good sense alike', as PAGE C.J. points out in *S. A. Nathan* v. *S. R. Samson*(2), 'that the Court charged with the execution of a decree should be allowed to question its validity.'"

The learned Advocate for the respondent contends that he is not asking that the executing Court should be considered to be empowered to question the validity of the decree, but that he is only asking that it should be held to have power to enquire into facts which, if proved, would take away its jurisdiction to order sale. Our learned brother, PANDRANG ROW J., has accepted this contention. Referring to *Raja of Vizianagaram* v. *Dantivada Chelliah*(3) and *Raja of Kalahasti* v. *Venkatadri Rao*(4), he says that

"if the executing Court has the power to decide whether execution should be allowed as directed in the decree, it follows that the executing Court in order to decide this question whether execution should proceed or not has necessarily the power of taking such evidence as may be necessary to decide it".

With all respect, we think that there is here a slight begging of the question involved. The question which we have to decide is whether the

(1) (1936) I.L.R. 59 Mad. 642, 654. (2) (1931) I.L.R. 9 Rang. 480 (F.B.).
(3) (1904) I.L.R. 28 Mad. 84. (4) (1927) I.L.R. 50 Mad. 897.

ANNAMALAI CHETTIAR v. SRIRANGA CHARIAR.

BORN J.

executing Court has power to go into disputed questions of fact which, if proved, would take away its jurisdiction to order sale. The only authority of this Court which is exactly in point would answer this question in the negative. It is not necessary to criticise *Raja of Vizianagaram* v. *Dantivada Chelliah*(1) and *Raja of Kalahasti* v. *Venkatadri Rao* 2). Those cases simply lay down that, where there are indisputable, or undisputed, facts brought to the notice of the Court which take away its jurisdiction to order sale, the Court, as CURGENVEN J. observed in *Raja of Kalahasti* v. *Venkatadri Rao* (2), has to stay its hand and refrain from execution. That is not at all, with due respect to our learned brother, the same as saying that when there is a dispute with regard to the facts, the Court has power or is bound to enquire into the dispute and to decide the question of fact. We think therefore that in this case the learned District Judge of Chittoor was right in holding that the judgment-debtor was not entitled to raise this question in execution. It follows that the orders of our learned brother in Civil Miscellaneous Second Appeals Nos. 52 of 1933 and 103 of 1933 must be set aside and the orders of the learned District Judge restored in both cases. The appellants will recover their costs from the respondent in all the Courts

A.S.V.

(1) (1904) I.L.R. 28 Mad. 84. (2) (1927) I.L.R. 50 Mad. 897, 909.