

APPELLATE CIVIL.

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

SRI JAGANNADHA RAJAMONI RAJ DEO (MINOR) BY
GUARDIAN, THE SUB-COLLECTOR, CHICACOLE (SECOND
RESPONDENT), APPELLANT,

1937,
July 26.

v.

V. RAMACHANDRA RAO (PETITIONER—DECREE-HOLDER),
RESPONDENT.*

Madras Court of Wards Act (I of 1902), sec. 45—Notification under—"Decree capable of execution by sale of immovable property"—Meaning of—Decree for money if a—Decree-holder not applying for attachment and sale of immovable property.

Under section 45 of the Madras Court of Wards Act the Local Government issued a notification declaring that "the execution of decrees passed by the Civil Court which are capable of execution by sale of any immovable property of the said ward . . . shall be transferred to the Collector of the Vizagapatam district".

Held that the description "decrees capable of execution by sale of any immovable property of the ward" in the said notification was wide enough to cover an ordinary decree for the payment of money even though the decree-holder had not in fact applied for attachment and sale of immovable properties in execution but had only applied for attachment of cash in the sub-treasury.

A decree for the payment of money can at any time be executed by attachment and sale of the immovable properties of the judgment-debtor and its character is not varied from time to time in accordance with the method adopted by the decree-holder for enforcing it.

APPEAL against the order of the Court of the Subordinate Judge of Chicacole, dated 9th September 1936 and made in Execution Petition

* Appeal Against Order No. 424 of 1936.

RAJAMONI RAJ
DEO
v.
RAMACHANDRA
RAO.

No. 29 of 1936 in Original Suit No. 57 of 1931 on the file of the Sub-Court, Berhampur.

Advocate-General (Sir A. Krishnaswami Ayyar)
for appellant.

B. Jagannadha Das for respondent.

JUDGMENT.

BURN J.

BURN J.—This appeal is preferred by the Court of Wards from the order of the learned Subordinate Judge of Chicacole passed in Execution Petition No. 29 of 1936 in Original Suit No. 57 of 1931. The respondent holds a decree against the son and the adopted son of the late zamindar of Mandassa directing them to pay the plaintiff from out of the properties of the Mandassa estate in their hands Rs. 7,966-10-9 with interest thereon at six per cent per annum from 7th November 1931 till payment. The decree-holder prays for attachment of the amount of Rs. 15,000 belonging to the Mandassa estate in the possession of the Sub-treasury of Ichapur under Order XXI, rule 52, Civil Procedure Code. The Sub-Collector of Chicacole who has taken over the management of the estate takes exception on the ground that under section 45 of the Madras Court of Wards Act the Local Government has declared that

“ the execution of decrees passed by the Civil Court which are capable of execution by sale of any immovable property of the said ward . . . shall be transferred to the Collector of the Vizagapatam district ”.

As the learned Subordinate Judge observes the question for consideration is what is the meaning of the expression “ decrees capable of execution by the sale of any immovable property of the ward ”? The learned Advocate-General contends that this description is wide enough to

cover an ordinary decree for the payment of money such as this one, since a decree for the payment of money can at any time be executed by attachment and sale of the immovable properties of the judgment-debtor. The contention raised for the decree-holder, which is supported by Mr. Jagannadha Das in this Court, is that the expression "capable of execution by the sale of immovable property" must be understood with reference to the execution proceedings that have actually been taken. The suggestion is that since the decree-holder has not in fact applied for attachment and sale of immovable properties, therefore the decree is not one which is capable of execution by the sale of immovable property. The learned Subordinate Judge has accepted this argument but in my opinion he has been misled in so doing. The learned Subordinate Judge says that

"the decree-holder's capacity to sell the property is co-existent with his desire to sell the same".

This, in my opinion, displays some confusion of thought. It is not correct to say that the decree-holder's capacity is co-existent with or in any way dependent upon his desires. He may be perfectly capable of selling the property but may not wish to do so. In fact, that was the state of mind in which he was when this execution petition was lodged. No one could allege that the decree-holder had not the capacity to bring the judgment-debtor's immovable property to sale. He was fully clothed with that capacity by the provisions of the Civil Procedure Code but he had no desire to sell the immovable property. What he preferred to do was to attach the

RAJAMONI RAJ
DEO
v.
RAMACHANDRA
RAO.
—
BURN J.

RAJAMONI RAJ
DEO
v.
RAMACHANDRA
RAO.
—
BURN J.

cash in the sub-treasury. The learned Subordinate Judge appears to have confused the question of the description of the decree with the method which the decree-holder may adopt to execute his decree. The expression "decree capable of execution by sale of immovable property" appears to me to be intelligible and clear and I am not prepared to restrict it in the way suggested by Mr. Jagannadha Das. In my opinion it would be wrong to hold that this description only applies to decrees in which applications have already been made for attachment and sale of immovable property. I think that the character of the decree is not in any way altered from time to time by the procedure which the decree-holder may adopt in execution of it. It is commonplace to say that an ordinary money decree may be executed by attachment and sale of movable or immovable property or by arrest and detention or by the appointment of a receiver. All these remedies may be adopted in succession; but it would be wrong to say that the character of the decree was varied from time to time in accordance with the method adopted by the decree-holder for enforcing it.

Mr. Jagannadha Das is prepared to argue that if this wide meaning is allowed to the expression "capable of execution by the sale of immovable property", almost any kind of decree may be brought within it. I am not prepared to enter upon a discussion of whether it would be feasible, e.g., to bring a decree for restitution of conjugal rights within this or not. I am quite clear that this decree which is for the payment of money is one which is capable of execution by sale of

immovable property of the ward and therefore, disagreeing with the learned Subordinate Judge, I hold that it is a decree which in pursuance of the notification of the Government, G.O. Ms. No. 1236, Revenue, dated 7th June 1936, must be transferred for execution to the Collector of the Vizagapatam district.

RAJAMONI RAO
DEO
v.
RAMACHANDRA
RAO.
BURN J.

For these reasons I think the appeal should be allowed and the order of the learned Subordinate Judge set aside. The respondent-decreeholder will pay the costs of the appellant.

LAKSHMANA RAO J.—I agree and would only add that the nature or character of a decree does not depend upon or vary with the mode of execution adopted by the decree-holder. The decree in this case is undoubtedly capable of execution by sale of immovable property of the ward and section 68 of the Code of Civil Procedure has no bearing. The language too is different and it is not permissible to construe section 45 of the Court of Wards Act with reference to the terms of section 68 of the Code of Civil Procedure which provides for transfer of the execution of decrees against immovable property in any local area to the Collector.

LAKSHMANA
RAO J.

A.S.V.
