

throughout will abide by the result of the suit. Court-fee paid here and in the lower appellate Court to be refunded.

VELLAYA
v.
RAMASWAMI.

V.V.C.

APPELLATE CIVIL

Before Mr. Justice Burn and Mr. Justice Stodart.

NARAYANAN CHETTI AND ANOTHER, MINORS,
BY THEIR MOTHER AND GUARDIAN UMAPALACHI
(PETITIONERS), APPELLANTS,

1939,
September 1.

v.

PANCHANATHAN CHETTIAR AND EIGHT OTHERS
(RESPONDENTS 1 AND 4 TO 11), RESPONDENTS.*

Code of Civil Procedure (Act V of 1908), O. XXI, r. 16—Applicability—Hindu father—Decree in favour solely of—Execution of, by his sons after his death—Recognition by Court which passed the decree, of the devolution on the sons, of the decree—Necessity—Sons entitled to the benefits of the decree along with father.

A decree passed solely in favour of a Hindu father cannot after his death be executed by his sons without recognition by the Court which passed the decree of the devolution upon them of the decree, even though the sons may be entitled along with their father to the benefits of the decree.

The sons are not "decree-holders" as defined in section 2 of the Code of Civil Procedure. The decree having been transferred to them by operation of law on the death of their father, Order XXI, rule 16. of the Code is applicable.

Ramsewakprasad v. Saran Singh(1) disapproved.

APPEAL against the order of the District Court of West Tanjore dated 14th April 1937 and passed in

*Appeal Against Order No. 31 of 1938.
(1) A.I.R. 1937 Pat. 607.

NARAYANAN
v.
PANCHANATHAN.

Execution Petition No. 4 of 1936 in Original Suit No. 93 of 1925, Sub-Court, Tanjore.

T. R. Venkatarama Sastri and *C. A. Seshagiri Sastri* for appellants.

N. Sivaramakrishna Ayyar for respondents.

BURN J.

The JUDGMENT of the Court was delivered by BURN J.—We cannot accept the contention on behalf of the appellants that they are decree-holders who can execute the decree without recognition by the Court which passed the decree of the devolution upon them of the decree. The appellants are not “decree-holders” as defined in section 2 of the Code of Civil Procedure. Their father was the sole decree-holder, and although the sons may well have been entitled along with him to the benefits of the decree—a thing which has yet to be investigated—it is impossible to say that they were, or are “decree-holders”. The decree has been transferred to them by operation of law on the death of their father and Order XXI, rule 16, of the Code of Civil Procedure is applicable. With respect we are not able to agree with the learned Judge who decided the case of *Ramsewakprasad v. Saran Singh*(1). The decision of the learned District Judge on this point is in our opinion correct. This appeal is accordingly dismissed with costs.

A.S.V.

(1) A.I.R. 1937 Pat. 607.
