

APPELLATE CIVIL.

Before Mr. Justice Madhavan Nair and Mr. Justice Burn.

VISWANATHAM KRISHTIAH (PLAINTIFF), APPELLANT,

1935,
September 6.

v.

YARRARANDA PEDDA VENKATA REDDY AND THREE OTHERS (DEFENDANTS 1 TO 3 IN ORIGINAL SUIT No. 112 OF 1932 IN DISTRICT MUNSIF'S COURT, KURNOOL, AND DECREE-HOLDER IN ORIGINAL SUIT No. 26 OF 1930, SUB-COURT, KURNOOL), RESPONDENTS.*

Code of Civil Procedure (Act V of 1908), sec. 47—Rateable distribution between rival decree-holders—Question as to—Question arising under sec. 47, if—Application for rateable distribution by one of them—Order dismissing—Appeal from—Competency of.

Where the question as to whether the amount realised by a sale of properties in execution should be rateably distributed between rival decree-holders relates only to a dispute between such decree-holders and the judgment-debtors are not in any way interested in the question, the question is not one which arises under section 47 of the Code of Civil Procedure and no appeal lies against an order dismissing an application for rateable distribution by one of such decree-holders. The fact that that decree-holder had before obtaining judgment attached the property does not make him a representative of the judgment-debtor so as to make the dispute one between parties to the suit within the meaning of section 47.

Varada Ramaswami v. Vumma Venkataratnam, (1921) 42 M.L.J. 473, and *Ayisa Bivi Ammal v. Jokara Bivi*, (1925) 49 M.L.J. 375, followed.

Veyindramuthu Pillai v. Maya Nadan, (1919) I.L.R. 43 Mad. 107 (F.B.), distinguished.

APPEAL against the order of the District Court, Kurnool, dated 28th September 1933 and made in Civil Miscellaneous Petition No. 388 of 1933 in

* Appeal Against Order No. 481 of 1933.

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Execution Petition No. 7 of 1932 in Original Suit No. 26 of 1930 on the file of the Court of the Subordinate Judge, Kurnool.

V. S. Narasimhachar for appellant.

V. Govindarajachari for fourth respondent.

Other respondents were unrepresented.

MADHAVAN
NAIR J.

The JUDGMENT of the Court was delivered by MADHAVAN NAIR J.—The decree-holder in Original Suit No. 112 of 1932 on the file of the District Munsif's Court of Kurnool is the appellant before us. He obtained a money decree against respondents 1 to 3. Against the same respondents the fourth respondent before us had obtained a decree in Original Suit 26 of 1930 on the file of the Sub-Court of Kurnool. He applied by Execution Petition No. 7 of 1932 for attachment of the properties of the judgment-debtors on 26th October 1932. The sale of the properties was adjourned to 22nd August 1933. On that date, the appellant filed Execution Petition No. 638 of 1933 in the District Munsif's Court for execution of his decree. On the same date he filed an application for rateable distribution in the District Court of Kurnool. The question was whether he was entitled to rateable distribution. The lower Court dismissed his application and this appeal is against that order of dismissal.

A preliminary objection is taken that no appeal lies as the dispute in this case relates solely to questions between two rival decree-holders and the judgment-debtors are not interested in the dispute in any manner. The amount sought to be obtained by execution of the decree by the fourth respondent is a sum of Rs. 4,333-1-6. The sale of the properties fetched Rs. 3,525. The

amount of the decree of the appellant is Rs. 500 with costs. It is clear that the judgment-debtors are not in any way interested in the question as to whether the amount realised by sale of the properties should be rateably distributed between the rival decree-holders. In a case like this, where the question relates only to a dispute between rival decree-holders in which the judgment-debtors are not interested, it has been held by this Court that the question is not one which arises under section 47 of the Civil Procedure Code and the decision is not therefore liable to appeal; see *Varada Ramaswami v. Vunma Venkataratnam*(1). See also the decision in *Ayisa Bivi Ammal v. Jokara Bivi*(2). The appellant's learned Counsel seeks to distinguish these cases by saying that in his suit the decree-holder had before obtaining judgment attached the property and, since he had so attached it, he gets an interest in the property and he becomes a representative of the judgment-debtor; and so the dispute is between parties to the suit within the meaning of section 47. No authority in support of this contention has been brought to our notice. Reference has been made to certain observations in the decision in *Veyindramuthu Pillai v. Maya Nadan*(3) where the learned Judge held that an auction-purchaser is a representative of the judgment-debtor. Having regard to the fact that that case is not one which arises under section 73, we are not inclined to extend the principles mentioned in that decision to this case. In our opinion this case must be governed by the

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(1) (1921) 42 M.L.J. 473.

(2) (1925) 49 M.L.J. 375.

(3) (1919) I.L.R. 43 Mad. 107 (F.B.).

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decisions in *Varada Ramaswami v. Vumma Venkataratnam* (1) and *Ayisa Bivi Ammal v. Jokara Bivi* (2) referred to above. If so, the appeal is incompetent.

We are asked also to treat this appeal as a revision petition and deal with it on that basis. To our minds it does not appear that there is any question of jurisdiction involved in this appeal.

We uphold the preliminary objection and dismiss the appeal with costs.

A.S.V.

APPELLATE CIVIL.

1935,
August 27.

Before Mr. Justice Cornish and Mr. Justice Varadachariar.

STANES MOTORS, LTD., BY MANAGING DIRECTORS
MESSRS T. STANES & Co., LTD. (DEFENDANT), APPELLANT,

v

VINCENT PETER, MINOR BY HIS NEXT FRIEND AND MOTHER
MRS. RUTH AARON PETER AND ANOTHER (PLAINTIFFS),
RESPONDENTS.*

Master and servant—Servant—Negligence of—Accident happening during the course of employment—Servant not strictly carrying out the instructions of master—Fatal Accidents Act (XIII of 1855)—Suit for damages under—Master—Liability of.

D gave instructions to his driver, to take his car to C and bring it back after C had finished with the same. C used the car and asked the driver to bring it back next morning at 8 a.m. The driver took the car later that night on an errand of his own instead of taking it back to D's bungalow. The next morning the driver took the car from his house at 7-30 a.m. and went in the direction of C's bungalow which was about a mile off. In the course of this journey, on account of his

(1) (1921) 42 M.L.J. 473.

(2) (1925) 49 M.L.J. 375.

*Appeal No. 2 of 1935.