

against the deceased herself, or her personal representative. For these reasons we decide, in answer to the question submitted, that, if the suit had been properly framed, the plaintiff might have proved by oral evidence that the money lent was his, although the bonds were in another person's name.

1863.  
November 30.  
R. A. No. 21  
of 1863.

NOTE.—This case overrules *Special Appeal No. 79 of 1860*, Mad. S. D., 1860, p. 212. And see *S. A. No. 230 of 1859*, *ibid*, p. 98.

APPELLATE JURISDICTION (a)

*Regular Appeal No. 25 of 1862.*

CHENNAPA NÁYUDU.....*Appellant.*  
PITCHI REDDI and others.....*Respondents.*

Even with the permission of the Civil Court, a separate suit cannot be brought for mesne profits between the institution of the original suit and the execution of the decree thereon.

Act XXIII of 1861, Sec. 11 commented on.

THIS was a Regular Appeal against the decree of E. F. Elliott, Acting Civil Judge of Nellore, in Original Suit No. 18 of 1862, which had been instituted on the Civil Court's order on Miscellaneous Petition No. 158 of 1862. The plaintiff sued the defendants for rupees 1,212, being the value of grass of which the defendants had deprived the plaintiff for four years, at rupees 303 a year, between the institution of Original Suit No. 8 of 1858, before the late Principal Sadr Amin of Nellore, to recover lands on which the defendants were alleged to have encroached, and the execution of the decree in the same suit. The defendants pleaded that the institution of the separate suit for the loss of grass said to have been occasioned in the disputed land pending the final decision of the original suit was opposed to Sec. 9 of Act XXIII of 1861. The Civil Judge decreed that the defendants should pay the plaintiffs rupees 909, observing, however, that the institution of the suit appeared irregular under Sec. 11 of Act XXIII of 1861.

1863.  
November 30.  
R. A. No. 25  
of 1863.

*Rangayya Nayudu*, for the appellant.

*Mayne*, for the respondents.

(a) Present : Scotland, C. J. and Holloway, J.

1863.  
 November 30.  
 R. A. No. 25  
 of 1863.

The Court delivered the following

JUDGMENT:—This suit was brought for the value of grass which had become due to the plaintiffs between the institution of the suit and the execution of the decree.

The Acting Civil Judge decreed a portion of the amount sued for but without costs, and expressed his opinion that the matter ought to have been disposed of by the order of the Court executing the decree and not by separate suit.

The question is to be determined by the words of section 11, Act XXIII of 1861, which are “all questions regarding the amount of any mesne profits which by the terms of the decree may have been reserved for adjustment in the execution of the decree, or of any mesne profits or interests which may be payable in respect of the subject-matter of a suit between the date of the institution of the suit and execution of the decree, as well as questions relating to sums alleged to have been paid in discharge or satisfaction of the decree or the like, and any other questions arising between the parties to the suit in which the decree was passed and relating to the execution of the decree, shall be determined by order of the Court executing the decree, and not by separate suit, and the order passed by the Court shall be open to appeal.” Nothing can be more precise than these words: they indicate positively the procedure which ought to be adopted, and declare that the procedure here taken shall not be adopted. That the Civil Court ordered the suit cannot put the plaintiffs in a better position, because it is clear that there was no authority to make such an order, and because when the amount collected as mesne profits was improperly returned to the defendants an appeal was by the express words of this section open to the plaintiffs.

The decree of the Lower Court must be reversed; but in consequence of the errors having been committed under the sanction and by the express direction of the Judge, we think that each party should bear his own costs.

*Appeal allowed.*