

1870.
March 25.
S. A. No. 388
of 1869.
(C. M. P. No.
108 of 1870.)

we think non-compliance with the summons to attend to give evidence in the other appeal was not enough to warrant the exercise of the power in this case. The section requires that there should be a failure to comply with an order to attend to give evidence in the particular suit. The power to give judgment has reference to the suit in which the party is specifically ordered to give evidence.

The decree of the Civil Court must be reversed, and the case remanded for hearing and determination in the proper course. The costs of this appeal will abide the decree of the Civil Court.

Appeal allowed.

Appellate Jurisdiction. (a)

Civil Miscellaneous Regular Appeal No. 165 of 1869.

REDNUM ATCHUTARAMAYYA *Petitioner.*

KHAJA MAHOMED AMINKHAN *alias* } *Counter-Petitioners.*
 DADA SAHIB and another..... }

Numerous decrees had been obtained against the defendants, part of whose property consisted of a village which was attached in 1859. The village was under the management of the Collector whom the Courts below treated as a manager put in under Section 243 of the Code of Civil Procedure. The decree-holders received rateable shares in the nett income of the village in liquidation of their respective decrees. It appeared that it would take 15 years to pay off the various decree-holders. The petitioner applied to the Civil Court for an attachment of the village in execution of his decree. The application was refused on the ground that the village was already under attachment in satisfaction of other decrees.

Upon appeal the High Court ordered a sale of the village, the sale proceeds to be dealt with in accordance with the proper provisions of the Code, on the ground that it could never have been intended to give the Civil Courts for an indefinite length of time the management of the encumbered estates of the country or to compel decree-holders to submit to such an unreasonable delay as 15 or 20 years before obtaining satisfaction of their decree.

Quære, whether Section 243 was intended to be applied to the case of more than a single decree-holder.

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165 of 1869.

THIS was an appeal from an order passed by H. Morris, the Civil Judge of Rajahmundry, dated 23rd February 1869, on an application for execution of the decree in Original Suit No 3 of 1866.

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

The petitioner, applied to the Civil Court for attachment of a village, the property of the defendants, in satisfaction of a decree obtained by the petitioner against the defendants. The application was rejected on the ground that the village was already under attachment in satisfaction of other decrees. The other facts are set forth in the judgment of the Court.

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Kuppuramasamy Sastry, for the petitioner.

Miller, for the 1st counter-petitioner.

The Court delivered the following

JUDGMENT:—In this case it appears that numerous decrees have been obtained against the defendants part of whose property consists of the village of Vella. It appears that the village was attached in 1859, or rather more than 10 years ago. Apparently it is under the management of the Collector whom it is presumed the Courts below treated as a manager put in under Section 243. As many as eighteen decree-holders exclusive of the plaintiff (petitioner) receive rateable shares in the nett income of the village in liquidations of their respective decrees. These decrees include two decrees for maintenance for a total amount of Rupees 900 per annum. From the last report of the Civil Court it appears that, excluding from the calculation the decrees for maintenance, it will take from 7 to 8 years to pay off the sums now due to the several decree-holders, and if the plaintiff (petitioner) is admitted to receive a rateable share on account of his decree it will take 14 or 15 years to pay them off. So that the attachment and management of this estate which has already been under the care of the Courts for more than 10 years, will have to be continued for from 15 to 20 years further, in order to liquidate in this manner all the present decrees against the defendants. Now it is clear that it never could have been intended by the provisions of Section 243 to give the Civil Courts for an indefinite length of time the management of the encumbered estates of the country, or to compel decree-holders to submit to such an unreasonable delay as 15 or 20 years before they can receive satisfaction of their decrees. It is further

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extremely doubtful whether Section 243(a) was intended to be applied to the case of more than a single decree-holder or whether the Court has any authority to compel a prior attaching decree-holder to admit those subsequently attaching the estate to share rateably with him in the nett income of the estate. Sections 270 and 271 cited by the Civil Judge in his order of the 23rd February 1869 clearly do not apply where Section 243 has been acted upon, but only where there has been a sale of the estate and the proceeds are brought into Court for distribution. The plaintiff (petitioner) has applied for a sale of the property. Looking to the number of the decree-holders who have previously obtained attachments, it is for the plaintiff (petitioner) to consider whether he is well advised in pressing on a sale; but we are clearly of opinion that it would be an unreasonable and improper exercise of the provisions of Section 243 (even if they gave the authority which is very doubtful) to compel the plaintiff (petitioner) to submit to receive satisfaction only by means of a rateable share of the income during the next 20 years. We think therefore that the plaintiff (petitioner) is entitled to call for a sale of the estate, and that this must now be made in due course of execution, and then when the sale proceeds are brought into Court, the Civil Court will deal with the respective rights of the plaintiff (petitioner) and of other decree-holders in the distribution of the same in accordance with the proper provisions of the Code. The

(a) Section 243 is as follows :—When the property attached shall consist of debts due to the party who may be answerable for the amount of the decree, or of any lands, houses, or other immoveable property, it shall be competent to the Court to appoint a manager of the said property, with power to sue for the debts, and to collect the rents or other receipts and profits of the land or other immoveable property, and to execute such deeds or instruments in writing as may be necessary for the purpose, and to pay and apply such rents, profits or receipts towards the payment of the amount of the decree and costs; or when the property attached shall consist of land, if the judgment-debtor can satisfy the Court that there is reasonable ground to believe that the amount of the judgment may be raised by the mortgage of the land, or by letting it on lease, or by disposing by private sale of a portion of the land, or of any other property belonging to the judgment-debtor, it shall be competent to the Court, on the application of the judgment-debtor to postpone the sale for such period as it may think proper to enable the judgment-debtor to raise the amount. In any case in which a manager shall be appointed under this section, such manager shall be bound to render due and proper accounts of his receipts and disbursements from time to time as the Court may direct.

order of the 23rd February 1869 is set aside, and the Civil Court is directed to proceed to attach and sell the village of Vella in due course. The costs of this application must be added to the amount decreed and paid out of the estate.

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Appeal allowed.

Appellate Jurisdiction. (a)

Referred Case No. 51 of 1869.

P. AHOBALASOO CHETTY

against

VENKATAKRISTNAMMA and another.

A Small Cause Court can sell the undivided right, title, and interest of a deceased debtor, to which the defendants succeeded, in the moveable property in satisfaction of a decree obtained against the defendants without infringing the 2nd proviso of Section 6 of Act XI of 1865. Until the judgment-creditor has exhausted that mode of proceeding, he is not entitled to proceed against the debtor's immoveable property under Section 20 of the Act.

THE following was a case referred for the opinion of the High Court by H. P. Gordon, the Acting Judge of the Court of Small Causes at Vellore in suit No. 1040 of 1868.

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March 28.
R. C. No. 51
of 1869.

This is an application under Section 20, Act XI of 1865 for a certificate of the amount due under the judgment in Suit No. 1040 of 1868 to enable the judgment-creditor to proceed against the immoveable property of the judgment-debtors.

On the 11th December 1868 the judgment-creditor obtained a decree of this Court against defendants as guardians of the minor sons of one Ramannah deceased, which rendered the one-third share in certain undivided family property which would have accrued to the said Ramannah, on a division during his life-time, liable for the satisfaction of the said decree.

The application sets forth that this Court has no power to execute the decree in question, and plaintiff therefore applies to be allowed to proceed against the share of the deceased Ramannah in the family-immoveable property in the Court of the District Munsif.

Section 20, Act XI of 1865 provides for the issue of such a certificate as is applied for, only after the sale of the move-

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