

APPELLATE JURISDICTION (a)

*Special Appeal No. 171 of 1871.*RĀMANĀDAN CHETTI.....*Special Appellant.*KUNNAPPU CHETTI.....*Special Respondent.*

Suit brought to recover the amount to which plaintiff was entitled under a decree passed in favor of himself and defendant as co-plaintiffs in a former suit. It appeared that defendant purchased the property sold in execution of the decree and that the price for which the sale took place was sufficient to satisfy the decree. Instead of paying the purchase money into Court, defendant, with the knowledge and assent of plaintiff, retained the whole sum upon the understanding that he should give the Court a receipt for himself and on behalf of plaintiff, and afterwards pay to plaintiff his portion of the amount decreed. Accordingly defendant presented a petition to that effect and obtained a certificate confirming the sale. Defendant having failed to pay plaintiff his portion, the present suit was brought. Upon these facts, it was held, in Special Appeal, that the decree was satisfied by sale of the judgment debtor's property and that the execution proceedings were completely at an end, the defendant having been, by the assent of the plaintiff, made his agent for the acknowledgment of the satisfaction of the decree. No subsequent application under the decree could have been entertained by the Court which executed it. Therefore plaintiff's claim was not a matter determinable under Sec. 11 of Act XXIII of 1861.

1871.
August 16.
S. A. No. 171
of 1871.

THIS was a Special Appeal against the decision of J. D. Goldingham, the Civil Judge of Madura, in Regular Appeal No. 83 of 1869, confirming the Decree of the Court of the Principal Sadr Amin in Original Suit No. 129 of 1868.

The plaintiff as one of two plaintiffs in Suit No. 125 of 1866, on the file of the Principal Sadr Amin of Madura, sued for the recovery from the defendant (the other plaintiff) of Rupees 1,199-15-8 as principal and interest, together with further interest.

The plaintiff stated that the defendant purchased, for Rupees 1,700, a house and ground belonging to one Gopal Ayyan, which was sold in public auction on account of the judgment-debt due by him in the said suit to the plaintiff and the defendant, but that defendant failed to pay plaintiff his share of the purchase money, in proportion to the amount due to him under the bond on which the said suit was based.

The defendant admitted the purchase, and stated that the plaintiff was entitled simply to a moiety of the house so purchased by him; at the same time, he gave a deposition

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

admitting that out of Rupees 2,545-7-10, the judgment-debt in the said suit, he (defendant) was entitled to Rupees 1,070, and the plaintiff to Rupees 1,475-7-10.

1871.
August 16.
S. A. No. 171
of 1871.

The Principal Sadr Amin held that the defendant having made the purchase on behalf of himself, the plaintiff was bound to give him so much of the purchase money as appertained to his share, and, in this view, directed the defendant to pay plaintiff Rupees 991, together with interest Rupees 293-15-8, or Rupees 1,199-15-8 in all.

Upon appeal the Civil Court confirmed the decree of the Principal Sadr Amin.

The defendant preferred a Special Appeal upon the ground that, by Section 11 of Act XXIII of 1861, the question involved in this suit should have been decided in execution of the decree in Original Suit No. 125 of 1866, and not by separate suit.

Handley, for the special appellant, the defendant.

Karunakara Menon, for the special respondent, the plaintiff.

The Court delivered the following.

JUDGMENT :—This appeal arises out of a suit brought to recover the amount to which the plaintiff was entitled under a decree passed in Original Suit No. 125 of 1866, in favor of himself and the defendant as co-plaintiffs in the suit ; and the question is whether the suit lay for the amount.

It appears that the defendant became the purchaser of the property sold in execution of the decree, and that the price for which the sale took place was sufficient to satisfy the decree. Instead of paying the purchase money into Court in the strictly regular course, the defendant, with the knowledge and assent of the plaintiff, retained the whole sum upon the understanding that he should give a receipt to the Court for himself and on behalf of the plaintiff, and afterwards pay to the plaintiff his portion of the amount decreed. Accordingly the defendant presented a petition to

1871. that effect to the Court and obtained the necessary certifi-
 August 16. cate confirming the sale to him.
 A No. 171
 of 1871.

The defendant having failed to pay the plaintiff the amount of the judgment-debt to which he was entitled, he brought the present suit.

It appears to us that Section 206 of Act VIII of 1859 is clearly not applicable to the case, and the only point to be considered is, whether the suit is prohibited by Section 11 of Act XXIII of 1861. Upon the facts as stated it must be held that the decree was satisfied by sale of the judgment-debtor's property, and that the execution proceedings were completely at an end, the defendant having been, by the assent of the plaintiff, made his agent for the acknowledgment of the satisfaction of the decree. No subsequent application under the decree could, we think, have been entertained by the Court with executed it. The claim of the plaintiff, therefore, to the amount in effect received for him by his co-plaintiff (the defendant), was not a matter determinable under Section 11 of Act XXIII of 1861.

For these reasons we are of opinion that the suit is maintainable and that the decree of the Lower Appellate Court must be affirmed with costs. We are not to be understood as assenting to the view expressed in the 9th paragraph of the Civil Judge's judgment, that the words "questions arising between parties," &c., in Section 11 of Act XXIII of 1861, are limited in their meaning to questions between plaintiffs and defendants. It is unnecessary to decide the point.

Appeal dismissed.