

Muthayan Chetti Vs. Narasuvier

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Court : Chennai

Decided On : Oct-22-1889

Reported in : (1896)6MLJ46

Appellant : Muthayan Chetti

Respondent : Narasuvier

Judgement :

Shephard, J.

1. I am of opinion that the order of the Subordinate Judge was not open to appeal. There is no provision in the Code justifying an appeal against an order passed under Section 206 and no case is cited in which an appeal has been allowed. The question then is whether the petitioner is entitled to relief under Section 622. On that question the cases in Jivraji v. Pragji I.L.R. (1886) M. 51 Raghunath Das v. Rajkumar I.L.R. (1884) All 276 Surta v. Ganga I.L.R. (1885) All. 411. were cited. All that is decided in the Madras case is that in the particular circumstances the party was not entitled to appeal to the provisions of Section 622. It was not held that an order passed under Section 206 will under no circumstances constitute a case for interference under section 622. In the Allahabad cases there was difference of opinion between the learned judges, Old field J. holding that the party aggrieved by the amendment of a decree should appeal against the decree as amended, Mahmood J., on the other hand holding that an order of amendment constituted a separate adjudication which, not being the subject of an appeal under Section 588, might be revised under the provisions of Section 622. [46] For the reasons given by the learned judge I am inclined to the latter opinion. In the present case as in Raghunath Das v. Rajkumar 2 there was no clerical or arithmetical error in the decree and the decree was not at variance with the judgment. Under the decree as it originally stood, as by the terms of the judgment, the Respondent was held entitled to partition of the lands subject to the mortgages of the petitioner, the whole property comprised in the mortgages standing as security for the whole debt. The effect of the amendment is to sever the debt and the security and to compel the petitioner to recover part of the debt from the Respondent's share of the property and part from the other share. In my opinion there was nothing to justify the Subordinate Judge in making such an order and he acted ultra vires in holding so. I must set aside his order and restore the decree as originally framed and must direct that all costs of the petitioner be paid by the Respondent.

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