

**Jambuvien Vs. Venkatarayar**

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**SooperKanoon Citation :** [sooperkanoon.com/775291](http://sooperkanoon.com/775291)

**Court :** Chennai

**Decided On :** Aug-06-1894

**Reported in :** (1894)4MLJ235

**Appellant :** Jambuvien

**Respondent :** Venkatarayar

**Judgement :**

**Muthuswami Aiyar, J.**

1. It is urged in support of this appeal that the jurisdiction of the Subordinate Judge in insolvency matters is limited to decrees actually passed by himself and does not extend to decrees passed on appeal from his decrees by the appellate court although the suits in which they are passed are cognizable by him. In support of this contention reliance is placed on the wording of Section 360 of the Code of Civil Procedure. That section is in these terms:--'The Local Government may by notification in the official Gazette invest any court other than a District Court with the powers conferred on District Courts by Sections 344 to 359 of the Code of Civil Procedure and the District Judge may transfer to any court situated in his District and so invested any case instituted under Section 344. A court so invested may entertain an application under, Section 344 by any person who has been arrested or imprisoned or against whose property any order of attachment has been made in execution of a decree for money pasted by that court.' The argument is that the

words' 'passed by that court' are words of limitation and do not include decrees under execution, if they are passed by the appellate court in appeal.

2. By Section 344 plenary jurisdiction is conferred on District Courts subject to the condition precedent that the judgment-debtor is arrested or imprisoned in execution of a decree for money or that an order of attachment is made in execution of such decree. By the first clause of Section 360, power is reserved to the Local Government to confer on any court other than a District Court the powers conferred on District Courts by Sections 344 to 359. These two sections, if nothing more appeared, would disclose an intention to enable the Local Government to confer co-ordinate jurisdiction. As courts other than District Courts may have limited pecuniary jurisdiction over suits, the words 'in any decree passed by that court' are inserted. The occasion when the jurisdiction arises is arrest or imprisonment or attachment in execution of a money decree. The reasonable construction is that the words 'decree for money passed by that court' mean decrees passed by that court in suits which are cognizable by it or decrees passed in appeal in confirmation, reversal or modification of those decrees. For purposes of execution, the decree passed by an, appellate court is on the same footing with the decrees passed by the original court itself. When ever there is an appeal, the final decree capable of execution is the decree passed by the appellate court, whether it confirms, modifies or reverses the original decree. And if the appellant's contentions were to prevail, all decrees from which appeals are preferred would cease to be decrees passed by the original court for purposes of execution. There would also be this anomaly. A Subordinate Judge would have insolvency jurisdiction over one defendant who did not prefer an appeal and have no insolvency jurisdiction over another defendant in the same suit who preferred an appeal from his decree. At the last hearing when this Court directed the District Court to return the appeal preferred to it for presentation to the High Court, this objection was not taken. I dismiss this appeal with costs on the ground that the construction which ought to be placed on a statute should be such as fairly and reasonably executes the intention of the legislature where that intention is plain.