

Upendra Bhatta Vs. Ranganatha Bhatta

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Court : Chennai

Decided On : Mar-08-1893

Reported in : (1893)3MLJ229

Appellant : Upendra Bhatta

Respondent : Ranganatha Bhatta

Judgement :

1. The petitioner Upendra Bhatta obtained a money decree in Original Suit No. 206 of 1883 on the file of the District Munsif of Karakal against one Shridhara Bhatta; Shridhara Bhatta having died, execution was applied for against his sons, widow and undivided brothers as his heirs. In course of execution a certain piece of land called Madangabettu was attached and advertised for sale; counter-petitioner Ranganatha Bhatta, one of the brothers of the deceased Shridhara Bhatta objected to the sale on the ground that this land under the will of Shridhara Bhatta's father belonged to a certain temple. The District Munsif found that the land in question did not form portion of the land devised to the temple by the will and ordered execution to proceed. Present counter-petitioner appealed to the District Court; which after calling for a further finding from the District Munsif reversed his order and dismissed the execution-petition so far as it related to the Madangabettu land. The judgment-creditor Upendra Bhatta objects by this revision petition to the proceedings of the District Court on the ground that that court had no jurisdiction to entertain the appeal against the District Munsif's order inasmuch as that order was passed under the claim sections of the Civil Procedure Code

(Sections 278 to 283) and therefore by Section 288 no appeal lies against such order, but counter-petitioner's remedy was by regular suit. The objection was not raised in the District Court but being one relating to jurisdiction we cannot but entertain it.

2. The argument on the other side is that the question which the District Munsif had to decide was one between the parties to the suit or other representatives and relating to the execution of the decree within the meaning of Section 244 of the Civil Procedure Code and therefore was one to be decided by the court executing the decree and not by separate suit. This view is in accordance with the later decisions of all the High Courts. In some earlier decisions of the Allahabad High Court distinctions were drawn between cases where the judgment-debtor or his representatives set up a title in themselves and those when they set up a title as trustees on behalf of the third parties or of charities. But the later decisions adopting the principle laid down by the Privy Council in the case of *Abedoonissa Khatoon v. Ameeroonissa Khatoon*, L. R 4 I. A 66 have clearly established that when the question is whether the property in dispute belongs to the judgment-debtor, or to his estate, or not, and that question is raised in a proceeding in execution between parties to the suit, or their representatives, it matters not on what grounds the objection is taken to the property being made the subject of execution. The question is one to be determined in execution, and Section 244 bars a separate suit; see *Kuriyali v. Mayan*, I. L. R 7 M 255; *Ravunni Menon v. Kunju Nayar*, I. L. R 10 M 117; *Punchanun Bundopadhya v. Rabia Bibi*, I. L. R 17 C 711; *Nimba Harishet v. Sitaram Paraji*, I. L. R 9 B 458; *Malmantri v. Ashfak Ahmad*, I. L. R 9 A 605; *Seth Chand Mal v. Durga Dei*, I. L. R 12 A 313