

Ramanayya Vs. Rangapayya and anr.

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SooperKanoon Citation : sooperkanoon.com/784684

Court : Chennai

Decided On : Mar-17-1893

Reported in : (1894)ILR17Mad144

Judge : Muttusami Ayyar and Best, JJ.

Appellant : Ramanayya

Respondent : Rangapayya and anr.

Judgement :

1. It is argued before us that the debt contracted by the deceased first defendant was a family debt and is, therefore, binding on the respondents, and that the Subordinate Judge is in error in omitting to record a finding on this point.

2. The suit was originally brought against first defendant alone upon a bond executed by him. He does not appear to have been sued as representing the family, and defendants Nos. 2 and 3 were only brought in after his death as his legal representatives. In the view that the debt was a family debt, the contention in the Courts below as to the effect of the attachment on survivorship was immaterial. This contention is at variance with the case on which the parties proceeded to trial in the courts below.

3. As to the effect of the attachment on survivorship, it is to be observed that the attachment in question was one before judgment, and intended to protect the property from alienation by the defendant pending the decision of the suit. Till

decree was passed it could not operate to render the attached property available for sale in execution. In the case before us there was no decree when the respondents' right of survivorship accrued on the death of the first defendant, and the principle laid down in *Sadayappa v. Pannama* I.L.R. 8 Mad. 554 we think, governs this case; consequently the right of survivorship took effect before the attachment became effectual for the purpose of execution. The result is that the appeal fails and is dismissed with costs.

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