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Court : Chennai

Decided On : Sep-09-1891

Reported in : (1892)ILR15Mad345

Judge : Muttusami Ayyar and ;Parker, JJ.

Appellant : Kelu

Respondent : Vikrisha and anr.

Judgement :

1. The second respondent obtained a money-decree against first respondent in Original Suit No. 310 of 1888 on the file of the Shernad Munsif. Appellant also obtained a decree for money against first respondent on the small cause side of the Subordinate Court at Calicut in Small Cause No. 154 of 1889. In its execution, appellant attached the judgment-debtor's interest in certain kuri or benefit fund, brought it to sale, and realized Rs. 488. Meanwhile, second respondent had his decree transmitted to the Subordinate Judge for execution, and then applied for rateable distribution under Section 295 of the Code of Civil Procedure. Appellant objected to this proceeding on three grounds, viz., (i) that the decree in second respondent's favour was collusive; (ii) that it was not transmitted to the Subordinate Judge for execution through the District Court; (iii) that the decree, being one passed in a regular suit, was not capable of being executed on the small cause side of the Subordinate Court. The Subordinate Judge disallowed these objections and ordered rateable distribution. To this order three objections

are taken. It is argued that a District Munsif is not at liberty to transmit his decree to a Subordinate Judge for execution otherwise than through the District Court. In the case before us both Courts are in the same district, and the last paragraph of Section 223 is conclusive on this point. Another contention is that a decree passed by a District Munsif in the exercise of ordinary jurisdiction is not capable of being executed by a Subordinate Judge executing a decree passed by him in the exercise of his small cause jurisdiction. If both decrees were passed by the same Court, one on its regular and the other on its small cause side, there is no warrant in the language of Section 295 for the suggestion that they cannot be admitted to rateable distribution. The intention is to recognize the equal right of holders of decrees for money to share in the sale-proceeds realized by any one of them in execution, provided that the others have, prior to the realization, applied to the Court for execution. There is no apparent reason why a distinction should be made between one who holds a small cause decree and one who obtains a decree on the regular side. In this connection our attention is drawn to the decisions in *Gokul Kristo Chunder v. Aukhil Chunder Ghattarjee* I.L.R. 16 Cal. 457 and *Durga Charan Mojumdar v. Umatara Gupta* I.L.R. 16 Cal. 465, wherein the decision in *Narasayya v. Venkatakrishnayya* I.L.R. 7 Mad. 397 was dissented from. In the last-mentioned decision, a Divisional Bench of this Court held that chapter XIX created an extraordinary jurisdiction in cases mentioned in the last paragraph of Section 223, and that a District Munsif was at liberty to execute, and that a District Judge was competent to transfer to him for execution, a decree for a sum in excess of the pecuniary limit of the ordinary jurisdiction of the former. But two Divisional Benches of the High Court at Calcutta considered that there was no intention to create an exceptional jurisdiction in District Munsifs to execute decrees for more than the value of their pecuniary jurisdiction, and that Section 223 ought to be read as if Section 6 was incorporated with it. It is not necessary to determine, for the purposes of this case, whether the District Munsif has jurisdiction to execute a decree passed by a Subordinate or District Court for more than Rs. 2,500; but it is sufficient to observe that the Subordinate Judge had inherent jurisdiction to execute the decree for money passed by the District Munsif of Shernad. We dismiss the appeal with costs.

2. The civil revision petition is also dismissed.

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