**Dodda Basappa Vs. Puddi Earappa**

**Dodda Basappa Vs. Puddi Earappa**

**SooperKanoon Citation** : sooperkanoon.com/799428

**Court** : Chennai

**Decided On :** Mar-29-1926

**Reported in** : AIR1927Mad71; 97Ind.Cas.567

**Appellant** : Dodda Basappa

**Respondent** : Puddi Earappa

**Judgement** :

**Spencer, J.**

1. The plaintiff (appellant in this appeal) got a decree for possession of certain lands against five defendants of whom Defendants Nos. 2 to 5 were tenants. Having got the decree, he proceeded to execute it. The delivery of the land was ordered on the 20th November 1922, and it was delivered on 11th December 1922. At the same time the plaintiff asked in his execution petition for the attachment of the standing crop. The 2nd defendant put in a claim petition which must be taken to have been allowed on 3rd March 1923, because the order says 'Attachment has been raised.' On the same day the plaintiff applied in another execution application (E. A. No. 115 of 1923) saying that he had made a mistake in attaching the crop, for the delivery of sugar-cane crop standing on a portion of the land. The District Munsif's order dated 3rd March 1923, upon this petition was 'Deliver.'

2. Now this order was a wrong order, because if possession had already been delivered on 11th December 1922, no further order for delivery could be made on 3rd March 1923. If possession was not properly given on 11th December 1922, the decree-holder should have put in a fresh petition at that time and should have got effective possession as he was entitled to do. The tenants were made parties to the decree and so it was not one of those decrees which are executed under Order 21, Rule 36, by symbolical delivery. If, on the other hand, possession was not given when the decree was first executed, the decree-holder was not entitled under his decree to get delivery of the crops apart from the land. If his intention was to attach the crops apart from the land, then he should have applied for attachment and not for delivery. If he had done that, he would have been faced with the order just passed raising the attachment already made.

3. The respondent, instead of appealing against the District Munsif's order for delivery put in the present petition for re-delivery which the District Munsif dismissed and the District Judge allowed. Seeing that the District Munsif should not have ordered delivery on 3rd March 1923, and that the decree-holder's object in asking for separate delivery of the crops was to nullify the effect of the order just passed upon the defendant's claim petition raising the attachment. I find no occasion for interfering with the District Judge's order which had the effect of restoring the parties to the position that they occupied before the appellant put in his petition for the delivery of the sugar-cane crops. The appellant' s vakil admits that he does not claim mesne profits for the year in which these crops were raised as against the respondent in addition to the crops. The question of mesne profits could not be settled in an application for delivery of the land and the crop standing on it.

4. In this view of the case, it is unnecessary to discuss the question whether in this instance standing crops should properly have been treated as immovable property or as moveable property a-defined in the present Civil P. C. The rights of the parties in the present petition depend not so much on the right of a decree-holder to execute his decree for possession of immovable property by being put in possession of the land together with the crops that happen to be growing at the time of execution, but on the question what actually was delivered when this

decree was executed in December 1922, and whether the remedy now asked for by the appellant was open to him when he applied for the second delivery on 3rd March 1923. In the result the District Judge was right in allowing the appeal. The civil miscellaneous second appeal is dismissed with costs.