

Venkatarama Iyer and ors. Vs. Duraisami Iyer

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Court : Chennai

Decided On : Nov-01-1904

Reported in : (1905)15MLJ377

Appellant : Venkatarama Iyer and ors.

Respondent : Duraisami Iyer

Judgement :

1. We think the Subordinate Judge was wrong in holding that the share of the first defendant mentioned in paragraph 8 of the decree of the appellate Court meant the share of the first defendant as represented in the partition (including the shares in that shares of his sons). We are of opinion that it means only the share personal to the first defendant and does not include the shares of his sons, that is it meant only 1/5th of 1/3rd of the whole property. Otherwise, it would be impossible to give effect to the direction of the High Court in their judgment in Appeal Suit No. 208 of 1889 that no order should be passed in respect of the appellants (that is defendants Nos. 2 to 5) except that they should bear their own costs. We, however, agree with the Subordinate Judge that there was no actual reversal of the Subordinate Judge's original decree by the High Court. The High Court in fact only modified the decree given for the plaintiff. That being so, there is no reason why the attachment so far as it relates to the first defendant's personal share apart from the shares of his sons, defendants Nos. 2 to 5 should terminate in consequence of the decree of the High Court. The case of Lala Jagat Narayan v. Tulsirani 1 B.L.R. 71 is different. There the original decree was passed ex parte, and was entirely set aside as being improperly passed and it then ceased to exist and the fact that the court passed a similar decree did not revive or keep it alive. Here the original decree was a decree for the plaintiff for money and the appellate Court's decree did not set it aside but passed a decree for the plaintiff for money also though the principle upon which they arrived at their figures was different to that acted upon in the first Court. The decree of the first court power terminated but except in respect of certain details was in fact affirmed though modified. In the result we modify the orders of the Subordinate Judge by directing that the decree-holder may bring to sale the first defendant's 1/5th share of the property attached.

2. The respondent must pay the appellant's costs of this appeal The memorandum of objections is dismissed with costs.