

Nattamai K.P. Narasimha Ayyar and ors. Vs. Kasilya Venkatachalapathi Ayyar and ors.

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Court : Chennai

Decided On : Oct-31-1933

Reported in : AIR1934Mad181

Appellant : Nattamai K.P. Narasimha Ayyar and ors.

Respondent : Kasilya Venkatachalapathi Ayyar and ors.

Judgement :

Beasley, C.J.

1. This is an appeal from a judgment of Waller, J., in C.M.S. No. 155 of 1927 affirming an order of the District Court of Madura. This appeal arises out of an execution case. One Muthuswami Ayyar obtained a decree against the defendants. He assigned it to one Narasimha Ayyar who was duly brought on record. Narasimha Ayyar in his turn executed an assignment of the decree in favour of respondent 1 here. The first assignee opposed respondent 1's application to the execution Court for permission to execute the decree against the judgment-debtors and to have the assignment recognized. He stated that the assignment deed was true but that there was no consideration for it. The learned District Munsif dismissed the petition and an appeal was presented to the District Court. There a preliminary objection was taken that no appeal lay because the substantial contest was between the first assignee and respondent 1 here and not between the parties to the dispute, the judgment-debtors not being among the parties to the dispute. The learned District Judge overruled the preliminary objection holding that Section 47, Civil P.C., applies and that an appeal lies; and Waller, J., upheld that finding, and, in my opinion, rightly. It seems to me clear that all matters therein referred to are under a bar to a separate suit. Section 47(3) says:

Where a question arises as to whether any person is or is not the representative of a party such question shall for the purposes of this section (and these are the important words) be determined by the Court.

2. I am unable to understand from a reading of that section that as regards the bar of a separate suit any distinction is drawn between Sub-section (1) and any other sub-sections. The marginal note is 'questions to be determined by the Court executing decrees.' This is a Court executing the decree and Sub-section (3) says that the question arising here is to be determined for the purposes of this section by the executing Court. I am aware that upon this point there are conflicting decisions of this High Court, but satisfied as I am that upon a plain reading of that section the order in question is an appealable order, I am prepared to base my judgment upon that section and that alone. This appeal must be dismissed with costs.

Bardswell, J.

3. I agree.

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