

APPELLATE CIVIL.

— Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and
Mr. Justice Aston.

1906.

March 13.

LAKSHMAN SADASHIV SHET REDIZ (ORIGINAL SURETY, DEFENDANT
—No. 4), APPLICANT, v. GOPAL ANNAJI KARGUPIKAR AND ANOTHER
(ORIGINAL PLAINTIFFS), RESPONDENTS.*

*Civil Procedure Code (Act XIV of 1882), section 253—Decree against
Surety—Execution against Surety—Practice and Procedure.*

The provisions of section 253 of the Civil Procedure Code (Act XIV of 1882) do not permit the execution of a decree against the surety, who has become liable for the performance of the decree passed prior to his entering into the obligation.

Venkapa Naik v. Basalingapa⁽¹⁾ explained.

SECOND appeal from the decision of M. P. Khareghat, District Judge of Ratnágiri, confirming the decree passed by Mahadeo Shridhar, First Class Subordinate Judge at Ratnágiri.

This was an application to execute a decree against a surety under section 253 of the Civil Procedure Code (Act XIV of 1882).

The appellant became a surety for the original defendant for the due performance of the decree by the latter. This was after the date of the decree.

The decree-holder then, in execution of the original decree, proceeded against the surety.

The Court of first instance ordered execution to issue against the surety.

Against this decision, the surety appealed to the lower appellate Court. One of his contentions there was the decree-holder could not proceed against him by way of execution but must file a separate suit. The learned Judge overruled this contention and confirmed the order passed by the Subordinate Judge.

The surety appealed to the High Court.

H. C. Coyaji, for the appellant.

G. S. Rao, for the respondents.

* Second Appeal No. 754 of 1905.

(1) 1887) 12 Bom, 411,

JENKINS, C. J. :—This appeal arises out of an application for the execution of a decree against a surety under section 258 of the Civil Procedure Code.

In order to accede to the argument advanced before us by the respondents in support of the decree passed in their favour in the lower Court, we must read in section 253 the word “before” as being equivalent to “before or after.”

There are decisions of this Court, and in particular I refer to that in *Venkappa Naik v. Baslingappa*⁽¹⁾ where it has been determined that certain words in that section are superfluous. But I do not feel at liberty to introduce into the section the words necessary for the success of the respondents' argument. The case of *Venkappa Naik v. Baslingappa*⁽¹⁾ has been relied on both before us and in the lower Court. It was in effect there said that the words “in an original suit” were superfluous. How far that opinion was justified I need not discuss, but it is erroneous to suppose that there is any warrant in that decision for treating as superfluous not only the words “in an original suit,” but also the words “before the passing of the decree.” These last words are kept intact by that decision.

Here the surety has become liable, if at all, for the performance of a decree passed prior to his entering into this obligation. So that I come back to my original difficulty that we cannot read “before” as equivalent to “before or after.”

For these reasons the decision of the lower appellate Court appears to me to be erroneous, for (in my opinion) the Court had not jurisdiction to proceed under section 253 by way of execution. It may be that there is a remedy against the appellant, but it is not that which has been adopted.

The result, therefore, is that I would reverse the decree and dismiss the application with costs throughout.

ASTON, J. :—I also am of opinion that the Court had not jurisdiction under section 253 of the Civil Procedure Code to proceed in execution-proceedings taken in execution of the original decree against the surety in this case, and concur in the order proposed.

Decree reversed.

R. R.

(1) (1887) 12 Bom. 411.

1906.

LAKSHMAN
v.
GOPAL.