
(1936) 11 MAD CK 0072
In the Madras High Court

Addepalli Satyanarayanamurthy

APPELLANT

Vs

Vadlamannati Venkateswararao

RESPONDENT

Date of Decision : 27-11-1936

Acts Referred:

Citation : AIR 1937 Mad 848

Hon'ble Judges : Beasley, C.J

Bench : Division Bench

Judgement

Beasley, C.J.—The position arising in this civil revision petition can, I think, best be expressed as follows: A is the respondent here and B is his judgment-debtor. C is the petitioner here. C owed B some money secured on two mortgage bonds executed by C in favour of B. A sought to attach the debt to B owing on these mortgage bonds. C, the petitioner, objected to the attachment on the ground that B owed him a sum or sums of money which extinguished C's debt to B, and he further stated that this set-off had in other cases been recognized by the Court. He claimed therefore that he was entitled in these execution proceedings to have the question of that set-off considered. The learned Subordinate Judge relying upon some rulings which he does not refer to, says:

The plea of discharge by the garnishee and its validity is not gone into in this execution proceedings, as according to the decided rulings it should not be investigated in the execution proceedings. The attaching decree-holder may take such further steps in execution as he likes.

2. No decided rulings having been cited by the learned Subordinate Judge; the learned counsel for the petitioner, the respondent being unrepresented although served with notice of this petition, has done his best to put me in possession of the rulings to which he thinks the learned Subordinate Judge was referring, and I am very much obliged to him for having done so. It is sufficient to say that the two rulings to which he has drawn my attention as possibly being thought by the Subordinate Judge to cover this question, namely, Alwar Aiyangar Vs. Subramania Dikshathar and Others, and Atmakuru Butchayya Chetty Vs.

Chakram Krishnamachari, , do not touch the point here. There the decision turned upon whether or not in execution proceedings the garnishee is entitled to deny the existence of the debt. That is quite a different thing to admitting its existence but seeking to wipe it out by proving a set-off as here. It is clear that the existence of the debt cannot in execution proceedings be challenged. These two decisions however do not say that whilst admitting the debt, the garnishee is not to be entitled to give evidence to prove that there is a debt owing to him by the judgment-debtor either diminishing or extinguishing the debt in question. There is clear authority upon this point that in execution proceedings such matters can be gone into and that is Tayabali Gulam Husein Vs. Atmaram Sakharam Vani, , and my attention has not been drawn to any case in which the principle laid down there has not been followed or has been dissented from. This civil revision petition must therefore be allowed and the case remanded to the Subordinate Court for disposal according to law. The petitioner is entitled to his costs of this petition.