

(1928) 11 MAD CK 0005
In the Madras High Court

A.K. Sundaravadivelu Mudaliar

APPELLANT

Vs

Anraj Sowcar and Another

RESPONDENT

Date of Decision : 26-11-1928

Acts Referred:

Citation : AIR 1929 Mad 274 : (1929) 30 LW 217

Hon'ble Judges : Ramesam, J

Bench : Division Bench

Judgement

Ramesam, J.—This is a Civil Revision Petition filed against an order of the Registrar of Presidency Small Cause Court in execution of Suit

No. 9799 of 1926. The decree-holder applied for recovery of the decree amount from a debtor of the judgment-debtor referred to as the

garnishee in the order of the lower Court. The garnishee appeared by vakil on the day fixed and did not state his pleas that day, but asked for time

to state his pleas. The Registrar's earlier narration of the facts is not inconsistent with the petitioner's present allegation that he asked for. time. The

petitioner files an affidavit that he asked for time. This is not contradicted, the respondents not caring to appear before me. It seems to me that the

allegation must be true and I accept it. The order of the Registrar on the record is ""adjourned to 1st March 1927."" If the garnishee admitted the

amount claimed and had no dispute and did not ask for time, there is no need for the adjournment. By consent the matter was adjourned to 4th

March 1927 and again adjourned to 9th March 1927. If there is no dispute there is no reason for these adjournments, On 9th March 1927 the

garnishee filed an affidavit stating that he did not owe to the judgment-debtor as much as was claimed by the decree-holder, and that a suit was

pending before the third Judge of the Small Cause Court...it being Suit No. 15954/26. When a suit was actually pending and being contested in

another part of the same Court, it is ridiculous to state that there was no dispute. The counter-affidavit filed by the decree-holder does not deny the

fact of the filing and pending of the suit No. 15954 of 1926 but expressly admits it How the Registrar can, on a perusal of the affidavit and its

connected records, come to the conclusion that the sum was due on 18th February 1927, passes my comprehension. What the connected records

of the affidavits are or can be, I am not able to see. The defendant began to contest C.S.S. No. 15954 of 1926 in January 1927 and how the

whole amount claimed can be found to be due on 18th February 1927 on the ground of no dispute is equally unintelligible.

2. But apart from the above incongruities and irregularities of the Registrar's order, his order seems to me to be passed without jurisdiction. The

jurisdiction conferred by Rule 33, of the rules of the Small Causes Court to enquire into the liability of the garnishee is only in a case ""where a suit

might be instituted in the Court."" This means that it is a case when a suit was not actually instituted. Obviously that rule could not have intended that

the Registrar should enquire into a claim when the identical claim is the subject of another suit in the same Court and contemplated the possibility of

conflicting decisions by the Registrar and a Judge of the Small Cause Court. In a case when a suit has been instituted, the duty of the Registrar was

to await decision of the Judge. In the present case, the suit 15954 of 26 was decided by the third Judge on 30th January 1928, and it was held that

only Rs. 450 was due out Of which a portion was paid to the decree-holder in 1524/1926, and it was also observed that the defendant may raise

the question of the validity of that payment in execution and not that Rs. 700 and odd was due to the plaintiff- a conclusion totally inconsistent with

the Registrar's conclusion. The Registrar's order is without jurisdiction and irregular as it was based on misconception of what happened before

him. I set aside the Registrar's order. The amount of the decree was paid by the garnishee (i.e. defendant S.C. 15954/1926) in Court. The

decree-holder respondent may pursue his remedy against it if it is still in Court. I am informed that it was drawn by the decree holder in S.C.S. No.

15954/1926, but I have nothing to do with it. Respondent 1 must pay the costs of the petitioner here and in the Court below.