

(1928) 11 MAD CK 0010
In the Madras High Court

A.K. Sundaravadivelu Mudaliar

APPELLANT

Vs

Anray Sowcar and Another

RESPONDENT

Date of Decision : 26-11-1928

Acts Referred:

Citation : 114 Ind. Cas. 847

Hon'ble Judges : Ramesam, J

Bench : Single Bench

Judgement

Ramesam, J.—This is a Civil Revision Petition filed against an order of the Registrar of the 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 the time. This is not contradicted--the respondent 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.

2. 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 was 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 3rd Judge of the Small Cause Court...it being Suits No. 15954 of 1926. 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 8. C.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 intelligible.

3. 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 which is the subject of another suit in the same Court and contemplate the possibility of conflicting

decisions by the Registrar and a Judge of the Small Cause Court.

4. 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 No. 13954 of

1926 was decided by the 3rd 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 No. 1524 of 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 Registrars 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 in S.C.S. No. 15954 of 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 of 1926 but I have nothing to do with it. The 1st Respondent must pay the costs of the petitioner here and in the Court below.