
(1931) 08 MAD CK 0016
In the Madras High Court

Alwar Aiyangar

APPELLANT

Vs

Subramania Dikshathar and Others

RESPONDENT

Date of Decision : 19-08-1931

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 7, Order 38 Rule 8

Citation : AIR 1932 Mad 169 : 136 Ind. Cas. 337 : (1931) 34 LW 906 : (1931) 61 MLJ 863

Hon'ble Judges : Curgenven, J

Bench : Division Bench

Judgement

Curgenven, J.—The question which arises in this case is whether a Court attaching a debt either before judgment or in execution can inquire

into the truth or the existence of the debt. The attachment in the present instance was made before judgment on an application filed on the same

day as the plaint. But I cannot find that it makes any difference whether such an attachment was made before judgment or in execution of the

decree and it appears to me that Rules 7 and 8 of Order 38, Civil Procedure Code, show that the Court has the same powers in the one case as in

the other. There is no authority arising in this Court upon this point. The Full Bench decision in Chidambara Patter v. Ranasamy Patter ILR (1903)

27 M. 67 : 13 M.L.J. 467 related to a disputed title to a debt, which it was held could be investigated under the old section of the Code now

corresponding to Order 21, Rule 58. This decision does not deal with the question of investigating the actual existence of the debt itself. There are,

however, two cases upon this point decided by other High Courts Ma Saw Yin v. Hockto ILR (1926) 4 Rang. 100 and Maharaja of Benares v.

Patraj Kunwar ILR (1905) 28 All. 262. Both the Rangoon and the Allahabad High

Courts have held that it is not for the Court to determine whether the debt is actually due or not. It has to attach the alleged debt and thereafter there are only two courses open to it, either to sell the debt or to appoint a Receiver to realise it. In this state of the case-law I propose to follow these decisions and to hold that there is no provision of law in force at present according to which the Court can investigate the existence of an alleged debt which it attaches. I am informed that the Allahabad and Rangoon High Courts have now framed rules relating to garnishee proceedings such as have been framed on the Original Side of this High Court, but we have no such rules for the other Courts of this Presidency.

2. I was in some doubt whether I should interfere in the circumstances of the present case but it seems to me that the Court has clearly exercised a jurisdiction which it did not possess and that the decree-holder is entitled to have matters restored to the position in which they stood before the petition was dismissed on the 25th August, 1930.

3. I accordingly allow the petition, set aside the District Munsif's order and direct him to proceed with the application according to law. The petitioner will get his costs in this Court.