
(1892) 04 MAD CK 0019
In the Madras High Court

Atchayya

APPELLANT

Vs

Bangarayya and Another

RESPONDENT

Date of Decision : 12-04-1892

Acts Referred:

Citation : (1893) ILR (Mad) 117

Hon'ble Judges : Muttusami Ayyar, J; Best, J

Bench : Division Bench

Judgement

Best, J.—appellant and petitioner Atchayya Garu obtained, in Original Suit No. 10 of 1886 on the file of the Vizagapatam District Court, a

decree for money against the respondents, while the latter obtained, in Original Suit No. 3 of 1886 of the same Court, a decree for land, mesne

profits and costs against the appellant's father and another. The amount due to appellant under his decree was Rs. 6,392, whereas that due to

respondents under their decree against appellant's father is nearly Rs. 9,000. Respondents tried to get the amount due from them to appellant set

off in part satisfaction of the amount due to them from appellant's father; but this was disallowed on the ground that appellant is not a party to the

respondents' decree, and as respondents were unable to execute their decree against appellant's father in consequence of the appellant having

attached the same in execution of his decree the respondents paid into Court the amount due under the latter decree, and asked that this money

might be kept in deposit, pending disposal of their claim to the same, as being money really due to their judgment-debtor, who had obtained in his

son's name the claim on which was obtained the decree, in Original Suit No. 10 of 1886, in which suit, they say, the father was the real plaintiff

though it was brought in the name of the son. The District Judge, without deciding the question whether the money was in fact due to appellant or

his father, ordered attachment of the same u/s 272 of the Code of Civil Procedure, observing that the "" decree-holder in Original Suit No. 10 of

1886 will have an opportunity either u/s 244 or 278 of showing that he is the real, as well as the nominal, owner of the decree amount in that suit.

2. It is contended on behalf of the appellant that respondents are not at liberty to set up in execution proceedings a claim which they might have set

up as a plea in the suit. They certainly might, as defendants in the suit, have pleaded that the suit was not maintainable by the appellant, as his

father, and not himself, was the real purchaser of the claim against them on which the suit was brought. They might have done so, and had they so

done the father might have been included as a party to the suit and the complications which have since arisen might have been thus avoided. But I

do not think the omission to raise this plea in the suit is fatal to the present claim. It must be remembered that the respondents are minors and

consequently can have had no personal knowledge of the facts, and it is quite probable that their guardian ad litem was not sufficiently well

informed of the facts to be able to object to the suit on this ground, as the document on which it was brought stood in the name of the then

plaintiff. Though this might have formed a ground of defence in the suit, I am unable to say that it is a plea that ought to have been then raised. I

would, therefore, disallow the objection that the claim now set up by the respondents is barred by Section 13 of the Code of Civil Procedure.

3. As the question whether the money in deposit belongs to appellant or his father, is one between the parties to the appellant's decree (No. 10 of

1886) and relates to the execution of that decree, the Judge should have decided it in these proceedings. Consequently if nothing further had been

done in the matter it would have been necessary to remand the case for a finding as to the ownership of this money. But there has been an enquiry

subsequently and the Judge's finding is that the money, in fact, belongs to appellant's father, and that the assignment of the claim on which the suit

No. 10 was brought was obtained by the father merely in the son's name. Vide the Judge's finding of 25th March 1891 in proceedings in re the

present appellant's petition No. 100 of 1886, to which these respondents were also parties. The Judge has given valid reasons for the finding at

which he has arrived.

4. I would therefore dismiss with costs both the appeal and petition.

Muttusami Ayyar, J

5. I come to the same conclusion. I was at first inclined to think that the decision in Original Suit No. 10 of 1886 was conclusive in regard to the

ownership of the money decree as due by respondents to appellant and petitioner Atchayya. It is no doubt so for the purposes of that suit and of

the execution of the decree passed therein. The appellant's father was, however, not a party to that suit, and it was open to him to satisfy the

decree passed against him in Original Suit No. 3 of 1886 with the money-decreed to his son if it really belonged to him, and if he only caused the

son to obtain a decree upon a promissory note taken in his name, but really for the father's benefit and with the father's money. As execution-

creditors in Original Suit No. 3 of 1886, the respondents might enforce any claim which the father, their judgment-debtor, might enforce for the

purpose of obtaining satisfaction of their decree. In attaching, therefore, the money standing to the credit of Original Suit No. 10 of 1886, the

respondents only exercised their right as execution-creditors in Original Suit No. 3 of 1886 to enforce a claim which their judgment-debtor had,

and this claim which they derived from their judgment-debtor existed, notwithstanding the decree in Original Suit No. 10 of 1886, and was not

extinguished by it, inasmuch as the father was no party to it. This being so, the only other question for decision is whether the finding of the Judge

that the money attached really belonged to the father is correct. I agree with my learned colleague that it is fully supported by the evidence

recorded at the subsequent enquiry held in connection with petition No. 100 of 1886.

6. I would also dismiss the appeal and the petition with costs.