
(1935) 10 MAD CK 0031
In the Madras High Court

Atmakuru Butchayya Chetty

APPELLANT

Vs

Chakram Krishnamachari

RESPONDENT

Date of Decision : 23-10-1935

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25

Citation : AIR 1936 Mad 152 : (1936) ILR (Mad) 966 : 160 Ind. Cas. 534 :
(1936) 43 LW 68 : (1936) 70 MLJ 20

Hon'ble Judges : K.S. Menon, J

Bench : Division Bench

Judgement

K.S. Menon, J.—This is a petition u/s 25 of the Provincial Small Cause Courts Act, to set aside the decree of the District Munsif of

Berhampore in Small Cause Suit No. 1197 of 1930. The plaintiff filed Small Cause Suit No. 542 of 1929 against one Seshayya. During the

pendency of that suit he applied for attachment of a sum of Rs. 130 out of Rs. 300 alleged to belong to that Seshayya and to be in deposit with the

defendant. As the defendant did not appear, the attachment was made absolute. (Exs. B and B-1). After the decree was passed in the said suit,

the plaintiff filed Execution Petition No. 501 of 1930, requesting the Court to send for the amount in the hands of the defendant already attached

before judgment and to pay the same to him. In spite of the fact that there was already an attachment before judgment, the Court made another

order of attachment. When notice was served on the defendant-garnishee, he filed a counter-statement (Ex. F) denying that he had any amount

belonging to the judgment-debtor with him. The Court made an order on the 29th July, 1930, disallowing the objection and directing the defendant

to deposit the amount into Court within a week. As the money was not

deposited, the plaintiff got himself appointed as Receiver, (Exs. D and D-1)

for the purpose of collecting the amount, and he has filed this suit. The defendant contended that there was no amount belonging to Seshayya with

him. The Lower Court, holding that, as the defendant had not filed a suit, under Order 21, Rule 63, CPC to set aside the order of the 29th July

1930, disallowing his objections to the attachment, he was precluded from agitating the question over again in this suit that no amount belonging to

Seshayya was with him, gave a decree as prayed for; hence this petition.

2. The only question that arises for decision in this petition is whether, when a garnishee merely denies the existence of a debt sought to be attached

in execution of a decree and an order is made disallowing that objection, that order comes within the purview of Rules 58 to 63 of Order 21, Civil

Procedure Code.

3. There are decisions of this Court as well as of the Allahabad and Rangoon High Courts, holding that it is not " within the province of an

executing Court to enquire into the truth or existence of a debt sought to be attached. This question arose directly for decision in the case of Alwar

Aiyangar Vs. Subramania Dikshathar and Others, and Curgenvn J, following the decisions reported in Maharaja of Benares v. Patraj Kunwar

I.L.R.(1905) 28 All. 262 and Ma Saw Yin v. Hockto I.L.R.(1926) 4 Rang. 100 held that it was not for the Court executing a decree to determine

whether the debt was actually due or not. The learned Judge went on to say, ""It has to attach the alleged debt and thereafter there are only two

courses open to it, either to sell the debtor to appoint receiver to realise it"". No decision of this Court has been brought to our notice in which a

contrary view has been expressed. It may also be observed that no rules regarding garnishee proceedings have been framed by this Court for the

guidance of the mofussil Courts similar to those existing on the Original Side of this Court and to those framed by the Allahabad, Rangoon and

Lahore High Courts. In those High Courts there are additional rules framed to the effect that if a garnishee denies the existence of a debt, the Court

may frame and determine an is sue relating thereto. In these circumstances, we are of the opinion that it is not for a Court executing a decree to

decide whether the debt attached is really due or not.

4. In support of the position that when a garnishee merely denies the existence

of a debt sought to be attached in execution and an order is made disallowing his objection, that order is conclusive unless he files a suit under Order 21, Rule 63 the decisions in Chidambara Pattar v. Ramaswamy Pattar (1903) ILR 4 Rang. 100, Subbier v. Moideen Pitchai and Tyaballi Gulam Hussain v. Atmaram Sakharam I.L.R.(1914) 38 Bom. 631 and Piara Ram v. Ganga Ram AIR 1924 Lah. 367 are relied on by the petitioner. But in all these cases the existence of the debt attached had been admitted. In the case in Chidambara Patter Vs. Ramasami Patter and Others, it was the assignee from the judgment-debtor in respect of the debt attached, who filed the objection at the time of execution and who subsequently filed the suit. The question for decision there was whether, when a debt, not secured by a negotiable instrument, is attached u/s 268 CPC a claim can be preferred by a third party and investigated u/s 78 CPC and whether the provisions of Section 283 applied to the orders passed in such claims, and it was answered in the affirmative. The decision in that case is no authority for the position that when the existence of the debt attached is itself denied, the denial of the garnishee can be considered to be a claim or objection under Order 21, Rule 58 or that when such objection is disallowed he can file a suit under Order 21, Rule 63. In the case reported in Subbier v. Moideen Pitchai also the existence of the debt was admitted by the garnishee and his claim was that the judgment-debtor had assigned it to a third party and that the amount was slightly less. In the case reported in Tyaballi Gulam Hussain v. Atmaram Sakharam I.L.R. (1914) 38 Bom. 631 also the garnishee admitted that he had a sum of Rs. 594 of the judgment-debtor, but claimed to have the amount set off against some amount due by him. In the case in Piara Ram v. Ganga Ram AIR 1924 Lah. 367 also the existence of the debt was admitted. It will therefore be seen that in all these cases the existence of the property attached, namely, the debt or the obligation on the part of the garnishee to the judgment-debtor had been admitted and the garnishee put forward some claim or other in respect of that debt. But in this case there is no such admission; the garnishee totally denied the existence of the title and consequently of any obligation on his part to the judgment-debtor. In these circumstances, it is not explained how, if the Court disallows the objection, he can "institute a suit to establish the right which he claims to the

property"" under Order 21, Rule 63. According to him the property in dispute, namely, the debt or the obligation on his part, is non-existent.

Therefore, it is not possible for him to claim any right to such non-existing property. In these circumstances, we are of the opinion that the objection

that the debt does not at all exist and orders of the executing Court, if any, consequent on such objection do not come within the purview of Rules

58 to 63 of Order 21.

5. The finding of the lower Court that the defendant is precluded from agitating the question, that he did not owe any amount to the judgment-

debtor, by reason of the order made on the 29th July 1930 cannot therefore be sustained.

6. There is no substance in the contention covered by issue 3 namely, that the plaintiff has not been validly appointed Receiver, or that he is not

entitled to sue for Rs. 130 only.

7. The petition is therefore allowed; the decree of the lower Court is set aside and the suit is remanded to that Court for trial and disposal

according to law. The costs incurred in this petition will abide and follow the result of the suit and will be provided for in the revised decree.