

(1927) 01 MAD CK 0016
In the Madras High Court

Bhavisetti Lakshminarasimham

APPELLANT

Vs

Vetcha Lakshminarasimham and Others

RESPONDENT

Date of Decision : 05-01-1927

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 53(6)

Citation : AIR 1927 Mad 728 : (1927) ILR (Mad) 677 : 103 Ind. Cas. 502 :
(1927) 26 LW 103 : (1927) 53 MLJ 150

Judgement

1. The question referred to the decision of the Full Bench in this case is as follows: ""Is the notice under Rule 53(6) to the judgment-debtor of the

attached decree necessary before the attachment comes into force?"" The learned Judges who made the reference have also added ""The Full Bench

might also suggest if they think fit that Rule 53 be amended so as to make it plain what it actually means. A notice to the decree-holder of the

attached decree would probably meet the case better than a notice to his judgment-debtor.

2. The question propounded refers to Rule 53(6) of Order 21 of Schedule I, Civil Procedure Code. The learned Judges who have made the

reference appear to have thought that there was a conflict of view between the decision in the case of Kuppusami Aiyar v. Kuppusami Aiyar

(1918) 24 MLT 495. and that in Nagu Reddiar v. Veerappa Mudaliar (1920) 13 LW 34 . We do not understand the learned Judge in the latter

case to have expressed any opinion with regard to the question of coming into force or completion of the attachment. It seems to us quite clear that

that decision was based entirely on the construction of Clause 6 of Rule 53 of Order 21, Civil Procedure Code. It is not however possible to agree

with the view of Abdur Rahim, J., in the former case at page 497 that the words

in the said clause ""either through the Court or otherwise"" refer to payment or adjustment and not to notice. The interpretation placed by the learned Judge on those words is opposed to all cardinal rules of construction. We are satisfied that the provision made in Rule 53(6) is only a special case of the application of a well-known principle of justice and equity intended for the protection of parties to a bona fide transaction without notice. Clause 6 above referred to has, in our judgment, nothing whatever to do with the completion or non-completion of the attachment or its coming into force.

3. Mr. Somayya for the appellant contended before us that Clause 6 should be confined to the invalidation of payments and adjustments made by

the judgment-debtor under the decree attached after receipt by him of the notice and cannot be held by implication to validate such payments or

adjustments made before the receipt of such notice. It is impossible to accede to such a contention. Indeed Mr. Somayya himself shrank from

saying that actual payments in cash were not to be protected, but contended that adjustments stood on a different footing. We see no logic in this;

provided they were made in good faith and without notice, payments and adjustments must stand or fall together. The necessary implication of the

provision in Clause 6 of R. S3 is that it is only after the judgment-debtor under the attached decree receives either through Court or otherwise

notice of the order of attachment that any payment or adjustment made by him to his decree-holder will not be recognised by the Court and that

therefore, if such judgment-debtor should in ignorance of such attachment have made any payment or adjustment, it should be regarded as a

payment or adjustment properly made under the decree to the rightful person. No question can in such a case arise with regard to any payments

not really made or any adjustments not bona fide effected. We are inclined to agree with the view taken by Abdur Rahim, J., in Kuppusami Aiyar

v. Kuppusami Aiyar (1918) 24 MLT 495, that notice to the judgment-debtor of the attached decree under Rule 53(6) is not necessary for the

purpose of completing the attachment and that the attachment is complete before any such notice is issued. Rule 53(1) provides that the attachment

of a decree shall be made, if the decree sought to be attached was passed by another Court, then by the issue to such other Court of a notice in

the terms thereafter referred to. There is no room for any doubt or ambiguity in the language employed. The expression by the issue to such other

Court of a notice"" is apt and sufficient to indicate that for the making of the attachment the notice should be to the Court which passed the attached

decree. It cannot of course be contended that the moment a mere order of attachment is passed by the Court seeking execution the attachment

becomes complete. The Code undoubtedly contemplates in all cases of attachment some kind of service or posting or publication or proclamation

for the purpose of effectuating an attachment and in the case of the attachment of a decree the form of effectuation provided is the service of notice

on the Court, which passed the attached decree. The decision of the Full Bench in Sinnappan alias Hetharmamana Rowther Vs. Arunachalam Pillai

and Others, , proceeded on a construction of Rule 54 of Order 21 and only held that the proclamation prescribed in Clause (2) of the rule was the

mode in which the attachment ordered should be effected. The conclusion was based on the collocation of the clauses in the rule and the necessity

in every case of the order made being served or promulgated. With reference to Rule 53 we are unable to regard the provision in Clause 6 for

notice as a pre-requisite for the completion of the attachment. But though on general principle after completion of the attachment any dealing in

regard to the attached property is forbidden it does not follow that persons who act bona fide without notice should in no case be protected. It has

been strenuously contended by the learned vakils for the appellant that Section 64, Civil Procedure Code, provides that ""when an attachment has

been made, any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all

claims enforceable under the attachment."" But the rules in the First Schedule of the Procedure Code are under terms of Section 121, Civil

Procedure Code, made part of the Code itself and it therefore follows that Clause 6 of Rule 53 merely provides an exception to the general rule

embodied in Section 64. If therefore in the present case it has been found, as it appears to have been, that the judgment-debtor of the attached

decree had no notice of the order of attachment at the time when the payment and adjustment pleaded were made, then it follows that even though

the attachment had already become complete and effective, the payment and adjustment should be recognized by the Court and the question

whether or not the notice provided for in Clause 6 is necessary for the attachment being complete or coming into force, does not directly arise. But the question has been referred to our decision and we think that it logically follows from what we have said that the notice to the judgment-debtor referred to in Rule 53(6) of Order 21, Civil Procedure Code, is not necessary to make the attachment come into force. In the view we have taken Rule 53(6), Civil Procedure Code, is quite plain nor do we regard it as necessary or useful to suggest the desirability, by any new rule, of providing for notice to the decree-holder of the attached decree, Because to do so would only be to afford further time and opportunity for fraudulent dealings with regard to attached decrees.