
(1905) 03 MAD CK 0002
In the Madras High Court

Cherathi Amma

APPELLANT

Vs

Raman Nair

RESPONDENT

Date of Decision : 28-03-1905

Acts Referred:

Citation : (1905) 15 MLJ 243

Judgement

1. In this case an application was made on the 30th July 1903 to execute a decree for money passed on the 30th July 1891 by arresting the first plaintiff, one of the judgment debtors. The other plaintiffs, judgment-debtors, are members of the same tarwad, the first plaintiff being the Karnavan.

2. A petition on the 22nd December 1903 by the decree-holder to amend the application by inserting a prayer for the attachment of tarwad properties was refused by the Subordinate Judge.

3. His successor, however, granted a similar application based on the same grounds in March 1904, without notice to the other judgment-debtors.

The properties of the tarwad have accordingly been attached and their sale ordered.

4. The eighth plaintiff, one of the judgment-debtors, contends that the amendment ought not to have been allowed, that the application of March 1901 to amend and to attach the tarwad properties must be treated as a fresh application, and as it is made more than 12 years after the date of the decree, it is barred u/s 230 of the Civil Procedure Code.

5. We are of opinion that this contention is sound. There was no prayer in the application of the 30th July 1903 to attach any of the tarwad properties in which the appellant was interested, while the application of March

1904 would affect the appellant's interest in tarwad properties.

The application is not made to rectify any error. The relief prayed for is entirely different. It must accordingly be treated as a fresh application to

execute the decree, and the amendment ought not to have been allowed.

6. It is also urged before us that the appellant is now precluded from appealing against the order as a subsequent order for sale has been passed.

The order for sale was not made under circumstances which would make the validity of the order for execution res-judicata

7. We must accordingly set aside the order of the Court below and direct the application to execute the decree by attachment and sale of the

properties to be dismissed with costs in this and the lower court.