
(1934) 09 MAD CK 0066
In the Madras High Court

Chivaukula Sheetharamayya and Another	APPELLANT
Vs	
Mulpuru Rathamma and Others	RESPONDENT

Date of Decision : 27-09-1934

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 73

Citation : AIR 1935 Mad 399 : (1935) 41 LW 41

Hon'ble Judges : Walsh, J

Bench : Division Bench

Judgement

Walsh, J.—These Civil Revision Petitions arise from an order passed u/s 73, Civil P.C. I may note at the outset that one of the petitioners, i.e. petitioner, 2 who is a decree holder, has no locus standi. The decree-holders who raised objection to the distribution of rateables in the lower Court were these in O.S. Nos. 60 and 61 of 1927 on the file of the Court of the Subordinate Judge at Masulipatam. Petitioner 2 in this Court is Gottamukkula Eamayya. He is not a decree-holder in either of the decrees. At the time of the presentation of the petition, the office raised a query as to how it could entertain the petition, in reply to which a note was made that he was the decree holder in O Section No 65 of 1926. It is now admitted that is a wrong number and that he is not a decree-holder in any of the decrees in question. On account of this, he must be eliminated, and we have only to deal with petitioner 1 who is the decree-holder in O.S. No. 61 of 1927. Petitions, as far as petitioner 2 is concerned, must be dismissed in limine.

2. One Venkatasubbaya had four sons, who were defendants 1 to 4 in O.S. No. 61 of 1927. The sons of these sons were defendants 5 to 9 in that suit. For convenience, I shall hereafter refer to Venkatasubbayya as the grandfather, defendants 1 to 4 as "the sons" and defendants 5 to 9 as "the grandsons". Venkatasubayya died and afterwards the four sons and (defendants 1 to 4) were adjudicated insolvents on 5-10-28 and their 9/16th share became vested in the Official Receiver. The petitioners who had decrees against the sons and grandsons brought to sale the 7/16th share of the grandsons and the sale

proceeds were deposited in Court. The respondents in Civil Revision Petition Nos. 690 to 963 claimed rateables as decree-holders. The respondent in C.E.P. 960 of 1930 obtained a decree in O.S. No. 65 of 1926 on the file of the Court of the Subordinate Judge of Masulipatam against the family properties and assets of the grandfather in the hands of defendants 1 to 4. The respondent in C.E.P. No. 961 of 1930 was a decree holder in O.S. No. 183 of 1928 on the file of the Court of the District Munsif of Gudivarla on the foot of a pronote executed by defendants 1 to 4 and a decree was passed against them. The respondent in C.R.P. No. 962 of 1930 got a decree in O.S. No. 17 of 1928 on the file of the Court of the Subordinate Judge, Masulipatam, on a pro-note executed by defendants 1 and 2, the sons, and the father Venkatasubbayya. The respondent in C.E.P. No. 963 of 1930 obtained a decree in O.S. No. 118 of 1925 against the father Venkatasubbayya and some others. It is not disputed that apart from the insolvency proceedings, the respondents in these cases are entitled to rateables so far as the share of "the sons" in the property is concerned. It is unnecessary to discuss the catena of cases by which it has now been laid down that u/s 73 all the judgment-debtors need not be identical and that if one or more of the judgment-debtors be the same, rateables can be got as regards their share of the property. On this, the Full Bench decision of Calcutta in *Ganesh Das v. Shiva Lakshman* (1903) 30 Cal 583 overruled the previous decision to the contrary, namely, *Deboki Nundan v. Hart* (1886) 12 Cal 294; and *Chhotalal v. Nabibhai* (1905) 29 Bom 528 overruled *Nimbuji v. Vadia Venkati* (1892) 16 Bom 683. This position is not disputed by the learned Advocate for the petitioners. But his contention is that the words "the same judgment-debtor in Section 73 will not include the case of the sons in a joint Hindu family who are under a pious obligation to pay their father's debt where a decree was obtained against the father alone.

3. I may first deal with the preliminary objection raised that this Court cannot interfere in revision, because the monies having been paid out, the petitioner has a remedy by way of suit u/s 73(2). There is no doubt a Bench decision of this Court reported in *Somasundaram Chettiar v. Sundaresa Rao* 1924 Mad 97, which appears to state so. No other authorities are referred to in that judgment and there are several authorities to the contrary in this Court : see *Tiruchithambala Chetti v. Seshayyengar* (1882) 4 Mad 383, (a Bench decision) and *Viraraghava v. Parasuram* (1892) 15 Mad 372. Several cases of such interference in revision by this Court have also been quoted, e.g., *Krishna Doss v. Chandook Chand* (1909) 32 Mad 334 , *Karpaga Nidhi Ltd. v. Ramaswamy Chetty* 1926 Mad 179, *Subramanian Chetty v. Ramaswamy Chetty* 1926 Mad 179 and *Subramanian Chetty v. Sivaswami Chetty* 1928 Mad 362. But one thing is clear from all these cases that the High Court will not interfere in revision unless the case is perfectly clear and all these cases were quite clear ones. In *Krishna Doss v. Chandook Chand* (1909) 32 Mad 334, it is stated:

The High Court will interfere where the right of the party is clear and where the result of non-interference will be only to multiply proceedings by driving the

party to a suit, in which there can be no defence.

4. In a revision case in *Seetharamayya v. Gurunadham* (1931) MWN 1012, Curgenvan, J., although the order of the lower Court was wrong, refused to interfere as money "had" been deposited and events happened long ago. In this he followed *Murugappa Chettiar v. Narayanswami Pillai* (1912) 17 IC 389. "The first ground contended for in revision is that the words "against the same judgment-debtor" in Section 73 will not include the case where, though the same estate is liable, the obligation is only " that of the members of a joint Hindu family to pay their father's debts. A very elaborate argument was addressed " before me and many cases were cited with the nett result, that the only case which exactly deals with this matter, namely, *Ramanathan Chettiar v. Subramania Sastrial* (1903) 26 Mad 179 which is the case followed by the lower Court is against the petitioner's contention. The present seems also to have been the first occasion on which it has been argued that that case is wrong or opposed to any decision either of this or of any other High Court, and it is to be remarked that one of the learned Judges who decided *Govind Abaji v. Mahomraj Vinayak* (1901) 25 Bom 494, which it is now argued is opposed to *Ramanathan Chettia v. Subramania Sastrial* (1903) 26 Mad 179 quoted the Mad ras case in *Chhotalal v. Nabibhai* (1905) 29 Bom 528, with approval. The argument in effect put before me is simply that I should draw deductions from cases which are not similar and thereby reach the conclusion that *Ramanathan Chettia v. Subramania Sastrial* (1903) 26 Mad 179. is wrong and that consequently the lower f Court has acted without jurisdiction. It has been held in *Somasundaram Chetty v. Tirunarayana Pillai* 1915 Mad 547, a case of this Court, that even if there has, been an error of law, the High Court will not interfere in revision.

5. In the matter of the applicability of Section 73 to a case like this, had it been a regular suit or an appeal, it might have been necessary to decide whether *Ramanathan Chettia v. Subramania Sastrial* (1903) 26 Mad 179, is correct on inferences drawn from other cases. It would be entirely out of place in a revision petition to hold that the lower Court has committed an error of law when a decision of this Court which has never been expressly dissented from supports it. I therefore do not propose to discuss any further the very elaborate arguments which have been addressed to me as regards the applicability of Section 73 and I am not prepared to interfere on this ground. In one of the cases quoted for the respondent, namely, *Nilmani v. Hiralal* 1918 Cal 281, although it, like the cases quoted for the petitioner, is not relevant since it deals with executors and there is a separate procedure laid in Order 81, Rule 1 and 2, in regard to executors, the learned Judges remarked:

We may add that we are not disposed to put a narrow construction upon "the terms of Section 78, so as to defeat the ends of justice.

6. The construction argued for by the 1st petitioner in this petition is certainly a narrow one. The second point urged is that as the interest of the sons has now passed to the Official Receiver the respondents could not exercise power over the

shares of the sons" which have passed to the Official Receiver and as there had been an attachment by the petitioner of the son's interest, even the Official Receiver could not exercise his power. It is unnecessary to consider, this question, because, as stated in the lower Court's order, in the decree of one respondent against the sons" there had been an attachment before adjudication and it is not necessary for every decree-holder to attach. I may however remark that the decision of the learned Subordinate Judge in discussing the power of the decree-holders to utilise the power of the father which has not been actually exercised by the Official Receiver was a most intelligent anticipation of the view taken of that matter by Pandalai, J., when it subsequently arose in *Chinna Veeria v. Gुरुvi Reddi* 1934 Mad 223, where his argument on the point is exactly that used by the lower Court. I am not at all convinced that the lower Court has made any error of law in this case and even if I were inclined to do so, since it is by no means a clear case I should not interfere in revision, when the petitioner has another remedy. The petitions as regards the 1st petitioner must therefore also be dismissed with costs.