
(1934) 09 MAD CK 0042
In the Madras High Court

Chivukula Seetaramayya 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 : 156 Ind. Cas. 631

Hon'ble Judges : Pakenham Walsh, J

Bench : Single Bench

Judgement

Pakenham Walsh, J.—These civil revision petitions arise from an order passed u/s 73 of the Civil Procedure Code. I may note at the outset

that one of the petitioners, i.e., the second petitioner, 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. The second petitioner in this Court is Gottamukkula Ramayya. 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.S. No. 65 of 1926. It is now admitted that that is 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 the first petitioner who is the decree-holder in O.S. No. 61 of

1927. The petitions, as far as the second petitioner is concerned, must be dismissed in limine. One Venkatasubbayya had four sons, who were

defendants Nos. 1 to 4 in O.S. No. 61 of 1927. The sons of these sons were defendants Nos. 5 to 9 in that suit. For convenience, I shall hereafter

refer to Venkatasubbayya as the grandfather defendants Nos. 1 to 4 as "the sons" and defendants Nos. 5 to 9 as the grandsons",

Venkatasubbayya died and afterwards the four sons (defendants Nos. 1 to 4.) were adjudicated insolvents on October 5, 1928, 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 Petitions Nos. 960 to 963 claimed rateables as

decree-holders. The respondent in C.R.P. No. 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 Nos. 1 to 4. The respondent in C.R.P.

No. 961 of 1930 was the decree-holder in O.S. No. 183 of 1923 on the file of the Court of the District Munsif of Gudivada on the foot of a pro-

note executed by the defendants Nos. 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 Sub-ordinate Judge Masulipatam, on a pronote executed by defendants Nos. 1 and 2 the sons

and the father Venkatasubbayya. The respondents in C.R.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 catema of cases by which it has now been

laid down that u/s 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 Bagra v. Shiva Lakshman Bhakat 30 C. 583

overruled the previous decision to the contrary, namely; Deoki Nandan Sen v. Hart 12 C. 294 and Chotta Lal v. Nabibhai 29 B. 528 overruled

Nimbuji Tulsiram v. Vadia Venkati 16 B. 683. This position is not disputed by the learned Advocate for the petitioners. But his contention is that

the words "the same judgment-debtors" 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.

2. 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 32 M.L.T. 155 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 Tiruchittambala Chetti v. Seshayyengar 4 M. 383 (a Bench decision) and Viraraghava v. Parasuram 15 M. 372.

Several cases of such interference in revision by this Court have also been quoted, e.g., Sree Krishna Doss v. Chandook Chand 4 Ind. Cas. 509 :

32 M. 334 : 5 M.L.T. 125 : 19 M.L.J. 307 Karpaga Nidhi, Ltd. v. Vania Vilasa Nidhi Ltd. 87 Ind. Cas. 390 : 43 M.L.J. 459 : (1925) M.W.N.

175 : 21 L.W. 518 : AIR 1925 Mad. 587 Subramanian Chetty v. Ramaswamy Chetty 91 Ind. Cas. 11 : 49 M.L.J. 753 : 22 L.W. 744 : AIR

1926 Mad. 179 : (1926) M.W.N. 427 and Subramanian Chetty v. Sivaswamy Chetty 109 Ind. Cas. 557 : 54 M.L.J. 278 : AIR 1928 Mad. 362 :

27 L.W. 804. 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 Sree Krishna Doss v. Chandook Chand 4 Ind. Cas. 509 : 32 M. 334 : 5 M.L.T. 125 : 19 M.L.J. 307 it is

stated: "The High" Court will interfere where the right of the party is clear and where the result of noninterference will be only to multiply

proceedings by driving the party to a suit, in which there can be no defence." In a revision case reported in Seetharamayya v. Gurunadhan (1931)

M.W.N. 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. Narayanaswami Pillai 17 Ind. Cas. 389 : (1912) M.W.N. 956.

3. 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 Chetty v. Subramania Sastrial 26 M. 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 Jakhadi v. Mahoniraj Vinayak Jakhadi*

25 B. 494 which it is now argued is opposed to *Ramanatha Chetty v. Subramania Sastrial* 26 M. 179 quoted the Madras case in *Chotta Lal v.*

Nabibhai 29 B. 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 Chetty v. Subrumania Sastrial* 26 M. 179 is wrong and that consequently the lower Court has

acted without jurisdiction. It has been held in *Somasundaran Chetty v. Tirunarayana Pillai* 25 Ind. Cas. 592 : 25 Ind. Cas. 592 : (1914) M.W.N.

738 a case of this Court, that even if there has been an error of law, High Court will not interfere in revision. 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 Chettiar v.*

Subramania Sastral 26 M. 179 is correct on inference 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.

4. In one of the cases quoted for the respondent, namely *Nilmani v. Hiralal* 43 Ind. Cas. 452 : 27 C.L.J. 100 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 XXXI, Rules 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 73, so as

to defeat the ends of justice. The construction argued for by the first petitioner in this petition is certainly a narrow one.

5. 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 sons 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. Guruvi Reddi* 148 Ind. Cas. 831 : 66 M.L.J. 278 : 39 L.W. 347 : AIR 1934

Mad. 223 : 6 R.M. 511 : (1934) M.W.N. 622 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.

6. The petitions as regards the first petitioner must, therefore, also be dismissed with costs.