
(1931) 04 MAD CK 0012
In the Madras High Court

Dasari Venkatacharyulu

APPELLANT

Vs

Manchala Yesobu and Another

RESPONDENT

Date of Decision : 08-04-1931

Acts Referred:

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

Citation : 136 Ind. Cas. 42 : (1931) 34 LW 864 : (1931) 61 MLJ 477

Hon'ble Judges : Sundaram Chetty, J

Bench : Division Bench

Judgement

Sundaram Chetty, J.—These revision petitions raise a somewhat novel point for determination. The petitioner is the 3rd defendant in the suit.

It appears that the plaintiffs applied for the appointment of a Receiver in respect of some standing crops in the suit land. In connection with that

application the Court passed an order directing the 3rd defendant to furnish security for Rs. 100. On his furnishing such security he could

appropriate the crops. No Receiver was actually appointed. That being so, it was the duty of the 3rd defendant to furnish the required security

which alone would entitle him to cut and carry away the crops. In pursuance of the order of the Court he put in a security bond into Court. The

Court passed an order on 6th December, 1929, to have the sufficiency of the security tested. Usually a warrant will be issued to an Amin of the

Court to make an investigation as to the adequacy of the security offered. For this purpose batta had to be paid for the issue of a process. There is

no doubt that the person bound to pay the batta was the 3rd defendant, inasmuch as it was his duty to furnish the security to the satisfaction of the

Court. Unless the security tendered by him is accepted by the Court it will be of no avail. It was not therefore the duty of the plaintiffs to have paid

the batta for the testing of the security tendered by the 3rd defendant. Default in the payment of the batta was doubtless on the part of the 3rd

defendant. The security tendered by him not having been tested, the Court was not in a position to accept it. In these circumstances the learned

District Munsif treated the case as one of non-compliance with the order of the Court directing security to be furnished and therefore passed an

order directing the 3rd defendant to deposit into Court a sum of Rs. 100 within 15 days. A warning was also given at the same time that, if such

deposit be not made, his defence would be struck off. In spite of this stringent order, the 3rd defendant failed to make the deposit and

consequently his defence was struck off by the Court on 4th March, 1930. Against these orders the 3rd defendant has filed the revision petitions.

2. There is no express provision in the CPC which would cover a case of this kind. Rule 21 of Order 21, Civil Procedure Code, enables the Court

to strike off the defence if default is made in the manner mentioned in that rule. Rule 16 of Order 6, Rule 20 of Order 16 and Rule 10 of Order 8

contain some provisions for punishing a party for default in a particular manner. The present case can only be brought u/s 151 of the Code which

deals with the inherent power of the Court to pass such orders as may be necessary in the ends of justice, or to prevent the abuse of the process of

Court. In this case the 3rd defendant not only made default in the payment of batta but failed to obey the further order of the Court directing him to

deposit the sum of Rs. 100, he having failed to furnish the required security. Without fulfilling that condition he had no right to cut and carry away

the crops. There was justification for the Court to treat the conduct, of the 3rd defendant as something amounting to a contempt of Court. Any

penalty which the Court thinks fit to impose on the 3rd defendant for such wilful default or disobedience should be deemed to be a step taken by

the Court in the exercise of the inherent powers vested in it by Section 151, Civil Procedure Code. The decisions in *Gauri Shankar v. Musammat*

Manki Kunwar ILR (1923) 45 All. 624 and *East Indian Railway Company v. Jit Mal Kallu Mal* ILR (1925) 47 All. 538 are cases which have a

bearing on the present case by way of analogy. The striking off of the defence of the 3rd defendant in this case would be within the jurisdiction of

the Court in the exercise of its inherent powers u/s 151. There is no case directly applicable to the facts of the present case; but still it seems to me

that the order passed by the Lower Court in the circumstances of this case is not without justification and therefore I see no proper grounds to

interfere with it in revision. I may also observe that the striking off of the defence is not the only order which the Court can pass by reason of the

3rd defendant's default or disobedience. All that I can say that this is one of the orders which the Court would be entitled to make in order to see

that the ends of justice are satisfied or that the process of Court is not abused. These Civil Revision Petitions are therefore dismissed.