
(1923) 04 MAD CK 0031
In the Madras High Court

Dattada Lakshmi Narasa Raju	Vs	APPELLANT
Yerrameetti Ganganna and Others		RESPONDENT

Date of Decision : 11-04-1923

Acts Referred:

Citation : 76 Ind. Cas. 769 : (1923) 45 MLJ 680

Judgement

1. The question in this appeal is whether the appellant's application for execution presented on 5-9-1919 is in time. It is not disputed here that it can be in time, only if something happened on 15-9-15, which can be regarded as a step in aid of execution within the meaning of Article 182, Schedule I, Limitation Act. 15-9-15 was the day, on which the previous execution application of the appellant, No. 55 of 1915, came on for hearing after notice to the Judgment-debtors. All we know of what happened on that day is that the Judgment-debtors were absent and that attachment was ordered. So far there is nothing, which can be regarded as a step in aid. We, however, are asked to presume that the attachment was ordered in consequence of some oral application having on that day been made by the petitioner. We need not consider whether we are entitled or bound to make that presumption. We observe only that there is nothing whatever on the record to support it. It is sufficient for us to say that, if such, presumption must be made, there is still in the case before us the objection taken in Masilamani Mudaliar v. Sethusami Iyer 33 M.L.J. 219 regarding it as a step in aid, that it can only have been an entirely superfluous repetition of an application, which had already been made in writing and which was pending orders of the Court. We have been asked to dissent from Masilamani Mudaliar v. Sethuswami Iyer I.L.R.(1907)

M. 251 : with reference to Abdul Khader Rowther v. Krishna Malval Nair ILR (1914) M. 695 : 26 M.L.J. 433, or in any case to refer the

correctness of the former decision on account of the alleged conflict between the two. We are unable to see that there is any conflict between the

two; and we see no reason for doubting the correctness of Masilamani Mudaliar v. Sethuswami Iyer ILR (1907) M. 251 : 33 M.L.J. 219. We add

only to the consideration referred to therein that at the stage in question in the disposal of the execution application with reference to Order 21,

Rule 23 there was nothing for the petitioner to do. The course of the proceedings as prescribed in that rule was that the person, to whom notice

had been issued, had to show cause to the satisfaction of the Courts that the decree could not be executed, and that, in case of his absence or of

his failing to show such cause, it was the duty of the Court as a matter of course to order the execution applied for.

2. Taking this view we agree with the lower Appellate Court and dismiss the appeal against appellate order with costs.