

(1927) 09 MAD CK 0011
In the Madras High Court

Dodla Rami Reddi

APPELLANT

Vs

Penubolu Venkatanarasimhulu Setti and Another

RESPONDENT

Date of Decision : 06-09-1927

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 49

Citation : 109 Ind. Cas. 617

Hon'ble Judges : Madhavan Nair, J; Jackson, J

Bench : Division Bench

Judgement

1. This civil miscellaneous second appeal arises out of a petition filed by the appellant to recognise the assignment to him of the decree passed in

O.S. No. 10 of 1920 on the file of the principal District Munsif of Nellore and for execution of the same. In that suit one Katakam Lakshmayya

obtained a decree against the 5th defendant for a sum of Rs. 312. This was assigned by the decree holder to the present appellant. When notice of

the assignment was sent to the judgment-debtor, he filed an objection petition in which he pleaded that the assignment was intended to defraud the

counter-petitioner's company of its due in O.S. No. 251 of 1920 and that the decree was assigned for a smaller sum than was really due to the

decree-holder. Both the Courts held that there was no consideration for the assignment deed Ex. A. and that it was intended to prevent the

counter-petitioner's company from setting off the decree amount in O.S. No. 251 of 1920 against the amount in O.S. No. 10 of 1920. In holding

that there was no consideration for the assignment, it may be noticed that the Courts had gone farther than the case set up by the counter-petitioner

which was only that the assignment was for a smaller sum than was really due to the decree-holder. It has been held in *Thimma Reddi v. Subba*

Reddiar 49 Ind. Cas. 141 : (1918) M.W.N. 507 that the absence of consideration for an assignment of a decree will not, provided the assignment

is not a sham transaction, deprive the assignee of his right to execute the decree. The real reason why the lower Courts thought that the assignment

was a fraudulent one is because according to their opinion, the 5th defendant in O.S. No. 10 of 1920 along with the others as decree-holders in

O.S. No. 251 of 1920 had a right to set off that decree amount against the decree amount in O.S. No. 10 of 1920. In this opinion, the lower

Courts have gone wrong. As we have already said, in O.S. No. 10 of 1920 Katakam Lakshmayya obtained a money decree personally against

the 5th defendant in that suit. In O.S. No. 251 of 1920 the 5th defendant along with others on behalf of a company obtained a decree against

Katakam Lakshmayya the decree-holder in O.S. No. 10 of 1920. The plaint, the judgment and the decree show without any doubt that the decree

obtained by Lakshmayya in O.S. No. 251 of 1920 was obtained by a company of which the 5th defendant was a member. It is thus clear that

there can be no case of set off in connection with these two decrees. This difficulty is got rid of by the District Munsif by saying: "it seems to me to

be clear that the decree against the 5th defendant in O.S. No. 10 of 1920 must be deemed to be a decree against the 5th defendant and his

partners who were in possession of the godown." There is no justification for this statement. The decree in O.S. No. 10 of 1920 is against the 5th

defendant individually. There is nothing to show that it was against the 5th defendant and his partners. The basis for the alleged fraud being thus

found to be non-existent, we must hold that the assignment is not fraudulent. As we are satisfied from the facts that the judgment-debtor in O.S.

No. 10 of 1920 has no right or equity to set off a cross-decree against the transferee, Section 49 of the Civil Procedure Code, is clearly

inapplicable to this case.

2. For these reasons, we set aside the orders of the Courts below. The District Munsif will take E.A. No. 247 of 1923 on file and dispose of it

according to law. The appellant will get his costs throughout. No orders are necessary in the civil revision petition.