

(1927) 07 MAD CK 0007
In the Madras High Court

Kasivajjala Ramaswami and Another

APPELLANT

Vs

Boddu Veeranna and Others

RESPONDENT

Date of Decision : 29-07-1927

Acts Referred:

Citation : (1927) 26 LW 725 : (1927) 53 MLJ 766

Judgement

1. The question for decision in this case is whether an application by the decree-holder for extension of time to file an encumbrance certificate can

be said to be a step-in-aid of execution within the meaning of Article 182, Clause (5) of the Limitation Act. In Kuppuswami Chettiar v. Rajagopala

Aiyar ILR (1921) M 466 : 1921 42 M L J 480 it was decided that a statement by a decree-holder objecting to the judgment-debtor's application

to enter up satisfaction is not a step-in-aid of execution. Applying the principle of that decision we must hold that the present application does not

amount to a step in aid of execution, as ""it does not ask the Court to take any step in aid of execution."" The decision in Katifi Muhammad

Hamidudin Saheb and Others Vs. Muhammad Ghouse Saheb and Others, is an express decision on the question before us. There it was decided

that an application like the present one cannot be said to be a step-in-aid of execution. In that case, reliance was placed upon the decision in

Kuppuswami Chettiar v. Rajagopala Aiyar ILR (1921) M 466 : 42 MLJ 303 and also on the decision in Krishna Pattar v. Seetharama Pattar ILR

(1926) M 49 : 24 LW 488 : 51 MLJ 480, which, following Kuppuswami Chettiar v. Rajagopala Aiyar ILR (1921) M 466 : 42MLJ 303, again

held that the filing of a statement by a decree-holder objecting to the judgment-debtor's application to record satisfaction of the decree is not a

step-in-aid of execution. In Katifi Muhammad Hamidudin Saheb and Others Vs. Muhammad Ghouse Saheb and Others, all the cases which have been now cited before us have been noticed.

2. Two decisions were specially relied upon by the appellant, namely Abdul Kader Rowther v. Krishnan Malaval Nair ILR (1913) M 695 : 26

MLJ 433 and Kunhi v. Seshagiri ILR (1882)M 141. No doubt the decision in Abdul Kader Rowther v. Krishnan Malaval Nair ILR (1913) M

695 : 26 MLJ 433 to the effect that an application to adjourn the case for the production of evidence amounts to a step-in-aid of execution does

support the appellant; but this case was subsequently dissented from in Masilamani Mudaliar v. Sethuswami Aiyar (1916) 41 M 251 : 32 MLJ

219 by Ayling, J. The decision in Kunhi v. Seshagiri ILR (1882) M 141 in view of the special facts of that case does not support the appellant's

arguments. There, it was found necessary that an order should be obtained from the Court for the purpose of proceeding with the execution of the

decree and when the petitioner asked the Court to issue such an order it was held that the application containing that request amounted to a step-

in-aid of execution. This case has been explained in the decision in M. Krishna Pattar Vs. K. Seetharama Pattar, .

3. The decision in Kuppuswami Chettiar v. Rajagopala Aiyar ILR (1921) M 466 : 1921 42 MLJ 303 has been followed not only in the two Law

Weekly cases already referred to but also in Balagurusami Naicken v. Guru-Swami Naicken (1924) 48 MLJ 506. (1916) 33 IndCas 79 . It

would thus appear that our Court has fairly consistently held that an application to amount to a step-in-aid of execution within the meaning of

Article 182, Clause (5), should be one asking the Court to take some step in furtherance of the execution of the decree. The only decision which

appears to us to hold a contrary view is the one in Abdul Kadar Rowther v. Krishnan Malaval Nair (1913) 38 M 695 : 26 MLJ 433. Ravur

Munusami Naidu v. Pandala Muthial Naidu (1916) 33 IndCas 79 simply follows this decision. As we have already pointed out, Abdul Kadar

Rowther v. Krishnan Malaval Naiar (1913) 38 M 695 : 1913 26 MLJ 433 has been dissented from in Masilamani Mudaliar v. Sethuswami Aiyar

ILR (1916) M 251 : 33 MLJ 219. The trend of the decisions of our Court is in support of the view held in Kuppuswami Chettiar v. Rajagopala

Aiyar ILR (1921) M 466 : 1921 42 MLJ 303. We think that decision so far as it relates to the point argued before us lays down the correct principle..

4. Lastly, it was brought to our notice that the decision in Rajendra Lal Saha v. Abdul Karim Abu Ahmed Ghuznavi Chaudhury 27 CWN 505 is in

favour of the appellant, but a perusal of that judgment makes it clear that no clear principle is enunciated in it. In these circumstances we hold,

applying Kuppusami Chettiar v. Rajagopala Aiyar ILR (1921) M 466 : 42 MLJ 303, that the decision of the learned Judge of the Court below

that an application for extension of time to file an encumbrance certificate is not a step-in-aid of execution is right and that the appellant's

application is barred by limitation. This appeal is dismissed with costs.