

(1939) 08 MAD CK 0040
In the Madras High Court

Katachikandi Thiyyathikandi Abdulla Kaka	APPELLANT
Vs	
Kadumandra K. Muthanna	RESPONDENT

Date of Decision : 15-08-1939

Acts Referred:

Citation : AIR 1941 Mad 45 : (1940) 52 LW 851 : (1940) 2 MLJ 420

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This appeal raises the question of the effect of a special rule promulgated by the Local Government of Coorg to govern the execution of decree in that province, upon the execution of such decrees, when transferred to a Court in British India. The appellant is the judgment-debtor. The subordinate Judge of Coorg passed a money decree against him and that decree was transferred for execution to the Court of the District Munsif of Cannanore. u/s 67(2), Civil P.C., the Chief Commissioner of Coorg has promulgated a rule to the effect that

lands, houses and other buildings and all immovable property shall not be liable to attachment or sale in execution of decrees of Civil Courts in Coorg with the exception of such immovable property as shall have been mortgaged or otherwise specifically pledged as security for the debt which is the subject-matter of the decree sought to be executed.

2. The argument of the appellant is that this rule must be read as restraining the execution of a Coorg decree for money by the sale of lands even when the decree has been transferred for execution in British India. As the rule stands, the words "in Coorg" might be read either as qualifying decrees of civil Courts" or as qualifying the words "shall not be liable to attachment or sale in execution". The former interpretation is possibly the more natural reading of the English words. But I am of opinion that it cannot be the proper interpretation of the clause. The reason for the rule is doubtless the curious tenures in Coorg where-under the person in separate enjoyment of land commonly has no power of alienation

without the consent of distant relatives, who are all notionally regarded as having an interest in land given for enjoyment to each member of a large family. Sub-section (1) of Section 67, Civil P.C., expressly restricts the power of making special local rules regarding the sale of any class of interests in land in execution of decrees for money, to those cases in which the interests are so uncertain or undetermined as, in the opinion of the Local Government, to make it impossible to fix their value. Sub-section (2) does not contain any such restriction but it empowers the Local Government to re-enact any special rule already in force before the Code came into operation in the province. It is reasonable to suppose that the object of Sub-section (2) is to deal with cases substantially similar to those dealt with in Sub-section (1).

3. Having regard to the language of Section 67(2), one must, I think, read this rule as a rule merely governing the execution of decrees within the province of Coorg, for the power to re-enact such special rules seems to contemplate only the enactment of rules restricting execution of money decrees within the local area. One may even doubt whether any local rule purporting to restrict or control the execution of decrees in another province would have any validity, having regard to the provisions of Section 40 which prescribes that where the decree is sent for execution in another province, it shall be sent to such Court and executed in such manner as may be prescribed by rules in force in that province. Clearly the Code contemplates the exercise of the rule making power with reference to execution in any province by the Government of that province. One must therefore read this special rule in the light of the general provisions of the CPC and in so far as it is ambiguous, it must be interpreted having regard to the powers which the Local Government of Coorg could legally exercise under the Code of Civil Procedure. In my opinion, the Local Government of Coorg had not the power, nor is it likely to have intended to frame rules to restrict the execution of its decrees when transferred to a Court in the Madras Presidency.

4. I am therefore of opinion that the rule embodying the restriction upon sales of land in execution of decrees of Civil Courts, applies only to sales of land within the jurisdiction of the Local Government of Coorg. It follows therefore that the Courts below are right in holding that the decree-holder can execute his decree in the Madras Presidency by the sale of land situated there, in spite of the restrictions under the special rule upon its execution within the province of Coorg. The appeal is therefore dismissed with costs. Leave to appeal is refused.