
(1937) 04 MAD CK 0016
In the Madras High Court

Katta Venkatayyagari Srinivasayya	APPELLANT
Vs	
Gowra Lakshmayya (deceased) and Others	RESPONDENT

Date of Decision : 09-04-1937

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 10

Citation : AIR 1937 Mad 811 : 173 Ind. Cas. 548 : (1937) 46 LW 266 : (1938) 1 MLJ 73

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—This appeal arises out of a suit for damages for wrongful attachment of the plaintiff's properties. The first plaintiff is the father and the second and third plaintiffs are his sons. The third plaintiff has a son, Sriramayya, who was summoned as a witness in a suit instituted by the defendant against certain third Parties. He did not appear and the present defendant accordingly applied to the Court to take proceedings under Order 16, Rule 10, Civil Procedure Code. In the attachment thus issued, four items of property were attached, as though they were "the property of Sriramayya. Admittedly, Sriramayya would not in any event be entitled to the full interest in those properties, because, even on the footing of the plaintiffs and Sriramayya being undivided, Sriramayya would be entitled only to a sixth share. There can be little doubt, that, whoever may be responsible for it, the warrant of attachment was wrongly drafted in not limiting the attachment to the sixth share of Sriramayya in the properties.

2. The plaintiffs, however, contended that before the date of that attachment, there had been a division between the three plaintiffs under an

unregistered partition deed Ex. C and that as between the third plaintiff and Sriramayya, Sriramayya had relinquished his interest in the family

property by a registered deed of relinquishment, Ex. A, in 1927. It also appears that in the Municipal registry these properties no longer remained

joint in the names of the plaintiffs but that specific items had been registered in the names of the three plaintiffs, in pursuance of the partition Ex. C.

According to the plaintiffs, therefore, Sriramayya had no interest at all in these properties. The plaintiffs further complain that the defendant acted

maliciously and without reasonable care, in getting the properties attached, when Sriramayya had no interest whatever therein.

3. The learned District Judge came to the conclusion that the defendant could not be said to have acted maliciously but that he must have been

reckless or at any rate did not know or realise that the plaintiffs' family had become divided. He refused to accede to the defendant's contention

that the partition arrangement in the plaintiff's family was not true or operative. Though Ex. C was unregistered, he was of opinion that it could be

received in evidence to prove a division of status; and in view of Ex. A, which was a registered document, and of the entries in the Municipal

books he held that the plaintiff's story of partition and release by Sriramayya of his interest in the family properties must be true. He also rejected

the defendant's contention that he could not be held liable in damages because the attachment was made under the orders of the Court. Relying on

the principle recognised in (1890) ILR 17 436 (Privy Council) he awarded Rs. 100 each to the three plaintiffs by way of damages. Against this

decree, the defendant has appealed. The third plaintiff has filed a memorandum of objections, claiming that a larger sum should have been

awarded.

4. We do not see any sufficient reason for differing from the view of the lower Court that the defendant has not been shown to have acted

maliciously. We do not think it necessary, for the purpose of this case, to canvass the correctness of the finding of the lower Court as to the truth of

the partition in the plaintiffs' family or as to the reality or operativeness of Ex. A. We propose to deal with the case on the assumption that

Sriramayya had no interest in the properties attached. We agree with the learned District Judge that the fact that the attachment was ordered by the

Court or was effected by an officer of the Court is not sufficient to exclude the liability of the defendant and, according to the principle laid down in

(1890) ILR 17 436 (Privy Council) no finding of malice or want of reasonable care is necessary in a case where the property of a person who is

not a party to the suit is wrongly attached. In such cases, the action is really one founded on trespass and not on special damage. The observation

in Ramanathan Chetty v. Meera Saibo Marikar (1930) 61 M.L.J. 330 (P.C.) must be read in the light of the decision in (1890) ILR 17 436 (Privy

Council) and the reference to "judicial action" limited to cases where the Court has addressed itself to the question whether particular properties

were liable to attachment or not. See Soobjan Beebee v. Shaikh Shureentoolah (1869) 12 W.R. 329. Mr. Somayya however contended that in

all the reported cases where damages for wrongful attachment have been awarded on the footing of trespass, the complaint had been made with

reference to the attachment of movable property which was taken away from the custody of the real owner in consequence of the attachment. He

argued that such deprivation of goods must necessarily have caused damage in that class of cases, but that in the case of attachment of immovable

property there can be nothing similar to it. Under the law, the attachment of immovable property merely operates as a prohibition of alienation by

the person against whom the order is made and who is supposed to be its owner; there is nothing in the attachment to fetter the rights of the real

owner, if he is not the defendant or party sought to be proceeded against. At best, there might be a cloud cast upon his title, which must be

remedied by proceedings under Order 21, Rule 58, Civil Procedure Code, but it cannot be said that an attachment of immovable property

involves anything in the nature of trespass or necessarily causes damage to the real owner. It cannot be denied that there is some force in this

distinction insisted on by Mr. Somayya. Mr. Krishnaswami Aiyangar, the learned Counsel for the respondents, sought to answer this distinction by

pointing out that even in the case of attachment of immovable property, the Amin has necessarily to go upon the property, to affix the notice of

attachment thereon as required by law and that this would amount to a trespass. He invited our attention to the very wide definition of the term

"trespass" in the authorities and contended that if trespass in law is established, the presence or absence of damage is immaterial. We do not

propose to express any final opinion upon the maintainability or otherwise of this distinction where an attachment takes place at the instance of a decree-holder, or upon the question whether, if all that the real owner can complain of consisted in the entry of the amin on the property to affix the notice, the principle of *de minimis non curat lex* will avail the defendant, to save him from liability for damages. In the present case, the proceedings were not taken at the instance of a decree-holder who may ordinarily be regarded as the person setting the Court in motion to attach the properties of his judgment-debtor and therefore rightly to be held responsible for pointing out to the Court officer the properties of his judgment-debtor. As already stated, the proceedings in this case were taken under Order 16, Rule 10, Civil Procedure Code. The main purpose of these proceedings is to vindicate the authority of the Court, though incidentally the particular party who is anxious to secure the presence of a witness may also benefit, if as a result of the proclamation or attachment, the witness should ultimately appear. If the witness does not appear the property attached is sold only for the purpose of realising the fine and not for the purpose of paying any money to the party who required his attendance. In view of this being the object of the proceeding, in the present case, we do not feel we will be justified in placing a person who asks the Court to take proceedings under Order 16, Rule 10, Civil Procedure Code, on the same footing as a decree-holder who moves the Court to attach certain properties as the properties of his judgment-debtor. Primarily, the proceeding to enforce the attendance of a witness is the act of the Court and it is only by way of indicating the method of procedure that Rule 13 in that order enacts that as far as they are applicable the provisions relating to the attachment of property of judgment-debtor shall apply to attachment and sale under the order. This does not warrant the view that for all purposes the legal consequence must be the same. It is on this narrow ground that we hold that there is no justification for holding the defendant liable in damages in the present case.

5. A further question may arise whether, if damages are to be awarded on the footing of trespass at all, anybody except the second plaintiff would be entitled to damages, because, even according to the plaintiffs' case, the particular item on which, according to the report of the amin, the notice

of attachment was affixed, namely, item 2, had fallen to the share of the second plaintiff in the family partition. Mr. Krishnaswami Aiyangar asked us to hold that the defendant must have acted maliciously in securing the attachment of the properties as the properties of Sriramayya; and in support of that argument he relied upon the evidence to the effect that the servant who beat the tom tom went about the village saying the properties of Goura people - a description of which will include the plaintiffs and not merely Sriramayya - had been attached and that the attachment warrant was not restricted to Sriramayya's share. The latter circumstance seems more probably due to carelessness than to malice. The story as to the tomtoming, even, taking it to be true, will not warrant the inference that the defendant instructed the village servant to use those words. On the other hand, there is no suggestion either in the evidence of the plaintiffs or in the cross-examination of the defendant that there was any motive for the defendant to think of injuring the reputation of the plaintiffs.

6. The result is that the decree of the Court below is set aside and the suit dismissed. But there can be little doubt that the defendant had acted very carelessly and that the plaintiffs had a certain amount of sentimental grievance. We accordingly direct the parties to bear their own costs both in the lower Court and in the appeal here. So far as the memorandum of objections is concerned, there is so little to be said in favour of it that we think we must dismiss it with costs of the defendant-respondent.