

(1940) 04 MAD CK 0011
In the Madras High Court

Kattuva Rowtha's son Moidin alias Siavu Rowthan	APPELLANT
Vs	
Dakshayani Amma and Another	RESPONDENT

Date of Decision : 24-04-1940

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 63, 64

Citation : (1940) 52 LW 807 : (1940) 2 MLJ 844

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The petitioner filed S.C. No. 460 of 1935 against a debtor and attached before judgment some money that was in the hands of

a garnishee. Some time later, the petitioner obtained a decree - we do not know its exact date, but it is said that it was some time before 7th

March, 1936. He did not take out execution of this decree. The respondents obtained a decree in S.C. No. 440 of 1935 against the same debtor,

and in execution they also attached on 26th November, 1935, this same sum of money in the hands of the garnishee. That money was paid into

Court on 3rd March, 1936 and upon an application by the respondents, the money was paid to them on 7th March, 1936. The petitioner

thereupon filed M.P. No. 590 of 1936; praying that the Court should recall the sum of money paid over to the respondents and distribute it

rateably between them. That petition was dismissed by the Subordinate Judge of Palghat, and hence this revision petition.

2. The petitioner's contention is that he was entitled to a share in the money that had been paid into Court by the garnishee and that the lower

Court acted illegally in paying that money over to the respondents. He contends that the Court was bound to see that the money was properly

distributed among those who had a claim to it. As proof that such a duty is cast upon the Court, he refers to Sections 63 and 64 of the Civil

Procedure Code. Section 63 only indicates that the Court" should adjudicate upon questions of this nature, and Section 64 explains the effect of an

attachment. Neither of these sections indicates that the Court should suo motu ascertain who are the various claimants to a particular sum of money

and then to divide that money among the persons who are entitled to a share of it.

3. Section 73 runs:

Where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for the

execution of decrees for the payment of money passed against the same judgment-debtor...the assets...shall be rateably distributed among all such

persons.

4. So that it is clear that the Court can only divide the assets among such persons as may have made application to the Court for the execution of

decrees. The present petitioner made no such application. He contends that his attachment before judgment becomes by some legal fiction an

attachment in execution. He states as authority for this unusual proposition a decision of a Full Bench of this Court in *Meyyappa Chettiar v.*

Chidambaram Chettiar (1923) 46 M.L.J. 415 : ILR 47 Mad. 483 . What the Court there held was that ""property attached in execution"" in Order

21, Rule 57, Civil Procedure Code, includes property attached before judgment when there has been a decree followed by an execution petition

for the purpose of bringing the property attached to sale. This judgment does not say that proceedings taken before execution can be deemed to

be proceedings taken after execution; but it only says that property attached before judgment may be considered to be property attached in

execution when it is followed by an execution application for the purpose of bringing the attached property to sale. As the petitioner has put in no

such application, the above decision has no application to this case.

5. This revision application could have been dismissed on the simple ground that the petitioner had a remedy by way of a suit afforded to him by

Section 73(2); but a decision on the point raised in the Court below has been given in order to avoid further litigation.

6. The revision petition is accordingly dismissed with costs.