
(1932) 10 MAD CK 0003
In the Madras High Court

K.C. Ethirajulu Chettiar

APPELLANT

Vs

The Official Receiver

RESPONDENT

Date of Decision : 03-10-1932

Acts Referred:

Registration Act, 1908 — Section 17

Citation : AIR 1933 Mad 152 : (1933) ILR (Mad) 453 : (1933) 37 LW 114 :
(1933) 64 MLJ 119

Hon'ble Judges : Venkatasubba Rao, J;Reilly, J

Bench : Full Bench

Judgement

Venkatasubba Rao, J.—The Lower Court has held that the decree is invalid for want of registration u/s 17 of the Registration Act, and Mr.

Venkatarama Sastri contends that this view is wrong. It is unnecessary to consider this point on account of the opinion we have formed on another question that has been raised.

2. A few facts bearing on that question may be stated. The appellant filed a suit (C.S. No. 164 of 1931) in the High Court on its Original Side for

the recovery of a certain sum of money. That suit was compromised by the defendant agreeing to pay a certain specified amount, which was

declared to constitute a charge on some Immovable property. It was also stipulated that in default of payment of the sum the property itself should

be sold. In pursuance of this compromise a decree was passed, which after stating that the Immovable property set forth in the schedule thereto

should be security for the payment of the amount mentioned went on to provide that in default of payment the plaintiff was to be at liberty to bring

the property to sale in execution of the decree itself. This decree was passed in April, 1931, and in June the plaintiff (appellant) got it transferred to

the Lower Court for execution as the property charged by the decree was situated within the jurisdiction of that Court. In July, 1931, a petition was filed for adjudicating the defendant an insolvent, and the respondent was appointed interim receiver in the insolvency. In September, 1931, the appellant filed an execution petition in the Lower Court applying for the sale of the property, which was charged by the decree. He also applied that the interim receiver should be impleaded as the 2nd defendant in the suit. The latter did not oppose the application and was accordingly impleaded as a party. The proclamation of sale was in due course settled, and the sale was finally fixed for the 21st March, 1932. In the meantime on the 12th March the interim receiver applied to the executing Court u/s 52 of the Provincial Insolvency Act that the sale should be stopped and that other suitable relief should be granted.

3. Mr. Venkatarama Sastri on these facts contends that Section 52 is inapplicable. The gist of the interim receiver's application is, that the decree of the High Court was ineffectual, not having been registered and that it did not therefore have the effect of making the plaintiff a secured creditor.

The section provides as to what should be done, where a decree being under execution, the executing Court is informed that a petition to declare

the judgment-debtor as insolvent has been admitted. The executing Court, the section says, shall direct the property of the debtor, against which

execution has issued, if in the possession of the Court, to be delivered to the receiver. Mr. Venkatarama Sastri's contention is that the property in

question was not in the possession of the Court and that the section therefore is inapplicable. The words ""If in the possession of the Court"" have

given rise to some difficulty. If what is attached is moveable property, there can be no doubt that it is the property in the possession of the Court.

As Immovable property under the procedure obtaining in India is not attached by seizure, some doubts were expressed whether such property can

be said to be property in the possession of the Court. In *Sivasami Odayar v. Subramania Aiyar* ILR (1931) 55 Mad. 316 : 62 M.L.J. 68 a Bench

of this Court, after referring to *Mahasukh J haver das v. Valibhai Fatubhai* (1927) 30 Bom. L.R. 455 and *Haranchandra Chakravarti v. Jay Chand*

ILR (1929) 57 Cal. 122, reluctantly came to the conclusion that Immovable property under attachment must be held to come within the terms of

the section. But at any rate there is no warrant for holding that property, which is not even attached, is in the possession of the Court. By no fiction

of law can it be held, that the property which a judgment-creditor is seeking to bring to sale on the ground that the decree creates a charge upon it,

is property in the possession of the Court. Section 52 does not therefore apply, and the Lower Court should not have allowed the interim

receiver's application.

4. A preliminary objection has been taken that the appeal is incompetent. The interim receiver, as I have pointed out, was impleaded as a party to

the suit in execution. But his application cannot be treated as falling within Section 47 of the Code of Civil Procedure. In making the application he

cannot be deemed to have represented the judgment-debtor; for the right he put forward was a paramount one, being that of the general body of

creditors. Mr. Venkatarama Sastri in the circumstances did not seriously contend that this should be treated as an appeal filed from an order made

u/s 47, Civil Procedure Code. The interim receiver, by reason of a statutory right conferred upon him by Section 52 of the Provincial Insolvency

Act, made the application in question to the Lower Court, and against an order made in such a proceeding, no appeal is provided. Such an order

comes neither u/s 47 nor falls within the definition of "decree" in the Code. To give effect to Mr. Venkatarama Sastri's contention, we must be

prepared to convert the appeal into a civil revision petition. The question then is, can we in the exercise of our discretion treat this appeal as a civil

revision petition? We are prepared to so treat it, as the Lower Court has infringed the plain provisions of Section 52 and had no jurisdiction to

make the order in question.

5. The order of the Lower Court is accordingly set aside but in the circumstances we direct the appellant to pay the respondent's costs of this

appeal.

Reilly, J.

6. I agree.