
(1956) 02 MAD CK 0024
In the Madras High Court

Kn. S. Kn. Ramanathan Chettiar

APPELLANT

Vs

Kannathal Achi and Others

RESPONDENT

Date of Decision : 23-02-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 34 Rule 6, 151

Citation : (1956) 2 MLJ 174

Hon'ble Judges : Panchapakesa Ayyar, J;Panchapakesa Aiyar, J

Bench : Division Bench

Judgement

Panchapakesa Ayyar, J.—This is a petition by one Ramanathan Chettiar, the plaintiff-decree-holder in O.S. No. 51 of 1948, on the file of

the Subordinate Judge's Court Sivaganga, for revising and setting aside the order of the Subordinate Judge dismissing I.A. No. 334 of 1951 in

O.S. No. 51 of 1948. The petition was filed by him under Order 34, Rule 6 and Sections 52(2) and 151, Civil Procedure Code, for passing a

personal decree against the legal representatives of the mortgagor. The learned Subordinate Judge held that the hypothecated properties had not

been exhausted and that, therefore, there was no reason for passing a personal decree regarding the properties of the original mortgagor in the

possession of his legal representatives. The allegation in the petition was that there were non-mortgaged properties of the mortgagor in the hands of

the legal representatives, that the balance of Rs. 18,000, or so, due to the petitioner under the mortgage decree, could be easily recovered from

these properties, and that the remaining items of the hypo heca referred to by the lower Court would yield no hang, as they had been taken over by

the Government and not a pie had been paid by Government so far as compensation. Mr. Vaidyanatha Iyer, the learned Counsel for the petitioner,

also tells me now that the petitioner is willing to give up his remedies against the hypo heca completely, and proceed only against the assets, of the

mortgagor in the hands of the legal representatives, and that therefore, he might be given a personal decree against these legal representatives so far

as the assets of the original mortgagor in their hands are concerned.

2. Mr. K.S. Ramamurthy, for the legal representatives, raises a preliminary objection that this revision petition will not lie, as an appeal will lie

against the lower Court's order dismissing the petition under Order 34, Rule 6 of the Civil Procedure Code. He relied upon the ruling of Happel,

J., in In Re: Shanmugham alias Muthukaruppan, , and on the ruling of a Bench of the Allahabad High Court in Muhammad Iltifat Husain v. Alim-

un-nissa Bibi (1918) 40 All. 553, and a ruling of a Bench of the Nagpur High Court in Ratanlal Harlalji v. Mt. Sagarbai AIR 1945 Nag. 289. All

these rulings make it clear that where an application under Order 34, Rule 6, Civil Procedure Code, has been dismissed, the order of dismissal will

be a decree, and a regular appeal will lie. Mr. Vaidyanatha Iyer could cite no ruling to the contrary. He wanted to distinguish those rulings by

urging three alleged distinguishing factors. The fact was that it was not the original mortgagor against whom a personal decree was being asked for

under Order 34, Rule 6, Civil Procedure Code, in this case but his legal representatives. This cannot, in my opinion, make any difference regarding

the matter under consideration now. The distinction is broadly between hypothecated properties and other properties of the mortgagor. Regarding

the other properties of the mortgagor, a personal decree must be got before they can be proceeded against, and the hypothecated properties must

have been exhausted; or if they are worthless, as alleged now, they must be given up before a personal decree can be got. When a Court, before

which an application under Order 34, Rule 6, Civil Procedure Code, is filed, rejects the application, for whatever reason, right or wrong"" the

remedy is by way of a regula appeal, and not by way of a Civil Revision Petition. The second distinguishing factor urged by Mr. Vaidyanatha Iyer

was that the properties sought to be proceeded against in this case are properties of the mortgagor in the hands of the legal representatives, and

that, therefore, Section 52(2), Civil Procedure Code, was also put in but that the lower Court over-looked it. I do not think that it makes any

difference. The point for consideration is whether the property proceeded against is hypothecated property or other property. If the properties

proceeded against, as the properties of the mortgagor are not hypothecated under the mortgage, then they can be proceeded against, in

whosoever hands they may be, only if a personal decree is got. So when the application for a personal decree under Order 34, Rule, 6, Civil

Procedure Code, was rejected the non-hypothecated properties of the mortgagor in the hands of the legal representatives cannot be proceeded

against at all till the order of dismissal is set aside and a personal decree is obtained. For that purpose, an appeal must be filed, and not a Civil

Revision Petition.

3. The third distinguishing factor urged by Mr. Vaidyanatha Iyer was that the petitioner is now prepared to give up all remedies against the

remaining hypothecated properties, as they are worthless and illusory, and that u/s 151, Civil Procedure Code, which also had been added by the

petitioner in his petition in the Court below, I might now grant a personal decree in view of the giving up of the entire remaining mortgage

properties. The argument is unsustainable. This, representation ought to have been made to the lower Court, which might or might not have, on that

concession, granted a personal decree. In an unsustainable Civil Revision Petition like this, it is unthinkable, that I can grant a personal decree. Mr.

Vaidyanatha Iyer could not cite any ruling whatever in support of his contentions.

4. In the end therefore, this Civil Revision Petition deserves to be and is hereby dismissed, but, in the circumstances, with it costs. The remedy for

the petitioner is clearly an appeal and not a Civil Revision Petition.

5. Mr. Vaidyanatha Iyer urges that he has a right to put in another petition under Order 34, Rule 6, Civil Procedure Code, in the lower Court, as

the lower Court has simply held that he is not entitled to a personal decree at this stage. This is a plausible argument, though I do not wish to say

anything, either way, about its merits.