
(1911) 02 MAD CK 0012
In the Madras High Court

K.P.A. D'Coutha and Another

APPELLANT

Vs

J.P. Assan Kunhu

RESPONDENT

Date of Decision : 24-02-1911

Acts Referred:

Citation : (1913) ILR (Mad) 1 : (1912) 22 MLJ 149

Judgement

1. What happened in this case was that the respondent, a subject of the Travancore Government, to whom one Matheru, also a subject of the

Travancore Government, had mortgaged his rights under a kuri chit which he held against the petitioner, an inhabitant of this presidency enforced

his mortgage and bought his judgment-debtor's interest in the chit in a sale held by the Travancore court in pursuance of the mortgage decree, It is

contended that the sale by the Travancore court of Matheru's interest in the chit was opposed to the principles of private international law and

therefore void. For this position Ganshamlal v. Bhansaii ILR (1881) B. 249 is cited as an authority. There the learned Judges held that a court of

British India had jurisdiction to attach in execution of a decree of a British Indian court a debt which was due from a person, a subject of a

Native State, to the judgment debtor, a subject of British India. The case may be distinguished from this case on the ground that there is no

question of realising in execution of a decree property which is situate in a foreign territory. The plaintiff in the present case instituted his suit in the

very territory where, according to the petitioner himself, the property is situate, i.e., in the Malabar District. No doubt Sargent J. bases his decision

on a general proposition which, if understood in its widest application, might cover this case, viz., that "an attachment of a debt due from a subject

of a foreign territory would be virtually an attempt to interfere in the interest of a third person in the jural relations arising out of, a cause of action over which ex hypothesi no court in British India has or even claims jurisdiction."" But the observation must be understood with reference to the nature of the process provided by particular sections of the Civil Procedure Code, for attachment of a debt. However that may be, we fail to understand why, if, as it is conceded, there is no principle of International Law which prevents a pledge of movable property or of a debt, supposing it is allowed by the law of the territory where the transaction took place, the court of that territory should be unable to sell the property in execution of its decree so as to pass a valid title to it, if the property is situate out of its jurisdiction. We may observe that the kuri receipt was in Travancore at the time of its pledge. The case cited in DICEY'S Conflict of Laws p. 524 (2nd Edition) seems to us to be clearly in support of the view we have suggested. See also North Western Bank v. Poynter, Son and Macdonald (1895) C. A. 56. The objection taken by the petitioner to the judgment of the lower court fails and the petition is dismissed with costs.