

(1908) 08 MAD CK 0002
In the Madras High Court

K.T. Ellusah

APPELLANT

Vs

Ruppa Rangayyan and Another

RESPONDENT

Date of Decision : 17-08-1908

Acts Referred:

Citation : 4 Ind. Cas. 1102

Hon'ble Judges : Arnold White, C.J;Sankaran Nair, J

Bench : Division Bench

Judgement

1. As regards the appeal against the order of July 16th the appellant, the party who asked for an order for rateable distribution u/s 295, Civil

Procedure Code, was an attaching creditor not of the judgment-debtor in his suit in which the application for rateable distribution was made

(Original Suit 52 of 1904) but of the judgment-creditor in that suit. This being so it is not a case where ""the Court holds assets for execution of

decrees for money against the same judgment-debtor"" within the meaning of the section. The application u/s 295 was, therefore, rightly dismissed

by the order of the 16th July. The appeal is dismissed with costs.

2. As regards the appeal against the order of August 13th an order for the payment out of the whole of the money in Court in Original Suit No. 52

of 1904 to another attaching creditor (Ruppa Rangayyan) the application on which the order appealed against was made was resisted on the

ground that the appellant was entitled to rateable distribution. As we have pointed out in our judgment in the other appeal he is not so entitled.

3. We decline to consider the point taken in appeal that the appellant was entitled to payment as a prior attaching creditor since it seems clear that

this was not the ground. on which he resisted the application in the Lower Court.

4. The appeal is dismissed with costs.