
(1910) 08 MAD CK 0041
In the Madras High Court

Kuppana Kaundan

APPELLANT

Vs

Kumara Kavundan and Others

RESPONDENT

Date of Decision : 05-08-1910

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : 7 Ind. Cas. 418

Hon'ble Judges : Wallis, J;Krishnaswamy Aiyar, J

Bench : Division Bench

Judgement

1. The petitioner who was the decree-holder purchased properties in execution of the decree and was obstructed by the respondents. He obtained an order for delivery, and an appeal against it was dismissed. Being resisted by the respondents when attempting to take delivery, he applies under Order XXI of the Civil Procedure Code, Rule 98. The District Judge has dismissed the application, holding that the said rule has no application. As regards the 7th defendant against whom no decree was passed and who was, therefore, not the judgment-debtor, the order is right. But we are unable to uphold it as regards the 1st defendant and Kumara Gownden, who is alleged to have purchased the property subsequent to the attachment and while the same was pending. The purchaser of the attached property is the representative of the judgment-debtor within the meaning of Section 47 of the new Code of Civil Procedure, corresponding to Section 244 of the old Code. See *Paramananda Das v. Mahbaer Dossji* 20 Ma. 378, *Lalji Mal v. Nand Kishore* 19 A. 332, *Gur Prasad v. Ram Lal* 21 A. 20, *Mathewson v. Gobardhan Tribedi* 28 C. 492. Under Rule 95 of Order XXI, the Court is authorised to order delivery to a purchaser against a person "claiming under a title created by the judgment-debtor subsequently to the attachment of the property." The first respondent is such a person, and any question between him and the decree-holder purchaser would fall u/s 47. There is nothing in Rule 98 which militates against this view. That rule has to be read along with Rule 95. No inference can be drawn against the applicability of Section 47 from the omission in Rule 98 of a person claiming title by purchase from the judgment-

debtor after attachment. In fact Rule 102, which recognises the transferee from the judgment-debtor as his representative in execution of decrees for possession of immovable properties, shows that a similar view must be taken of the purchaser of attached property. Rules 95 and 102 between them cover the cases of representatives of the judgment-debtor in cases of transfers after attachment under a money-decree and transfers of property whose possession is decreed to the plaintiff. The decision in *Jathavedan Nambudari v. Kunju Achan* 30 M. 72 : 2 M.L.T. 34 : 16 M.L.J. 433, has no application as the obstruction there was caused by a person who was not the judgment-debtor nor his representative. Assuming that there is any doubt in the matter on the language of Rule 98 itself, we should be quite prepared to hold that u/s 146 the Judge was bound to deal with the application under Rule 93. The District Judge was, therefore, wrong in holding that he could not entertain the application. It follows that we must also overrule the objection that no appeal lies.

2. It is urged for the respondent that the case is concluded by a previous order of the District Judge in Appeal No. 147 of 1909 on the file of his Court which we have already referred to. There the Judge dismissed an appeal of the present 1st respondent against the Subordinate Judge's order for delivery, and the ground of his dismissal was that the appellant was a person claiming in his own right and not on behalf of the 1st defendant. This was erroneous and we cannot regard that error as concluding the present appeal. A decision in one proceeding that no appeal lay has not the force of *res judicata* so as to preclude an appeal in another proceeding. We set aside the order of the District Judge, except as regards the 7th defendant and remand the case for disposal according to law. Costs hitherto incurred will be provided for by the Court below.