

(1929) 08 MAD CK 0019
In the Madras High Court

L.R. Rama Iyer

APPELLANT

Vs

S. Andiappa Pillai and Others

RESPONDENT

Date of Decision : 05-08-1929

Acts Referred:

Citation : AIR 1929 Mad 850

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

Bench : Division Bench

Judgement

Ananthakrishna Ayyar, J.—The plaintiff obtained a decree in O.S. No. 119 of 1924 on the file of the Sub-Court, Tinnevely against the

present defendants 1 and 2. In execution of that decree he attached certain moneys alleged to be due to them from defendant 4 in the case. Notice

was issued to defendant 4 who contended that no money was due from him to defendants 1 and 2. The Court enquired into the matter and

rejected the application of the decree-holder for attachment of the said monies upholding the contention of defendant 4 in that petition. "The

decree-holder has accordingly instituted O.S. No. 137 of 1925 on the file of the District Munsif's Court of Palamcottah against defendants 1 and

2, the original debtors, and against defendant 4 in whose hands the decree-holder alleged the judgment-debtor had monies and he also joined as a

party defendant 3 to whom nominally it is said defendants 1 and 2 have transferred the debt due from defendant 4 to themselves. Issues were

framed on the merits of the contentions and the pleas put forward by the several defendants in the case. The Court of first instance went into the

merits of the controversy on the evidence adduced and came to the conclusion that the contention of the plaintiff, the decree-holder in the prior

suit, was correct and it accordingly granted a declaration in favour of the plaintiff. Defendant 3 preferred an appeal against the District Munsif's

decree. When the appeal came on for "hearing a preliminary objection was raised by defendant 3 appellant to the effect that the present suit was

not maintainable because it was barred by the provisions of Section 47, Civil P.C., and though the point was not raised in the lower Court, the

learned Subordinate Judge was of opinion that the point being one of pure law, he was not only entitled but bound to consider the objection, and

consequently he went into the question whether the present suit was barred by Section 47. The learned Judge came to the conclusion that the suit

was so barred. A decision by a Bench of this Court reported in Subbier v. Moideen Pitchai AIR 1923 Mad 562, was quoted to the learned

Judge. The learned Judge, however, thought that that case was distinguished in a later case reported in R. Pethu Naidu Vs. Chuna Lakshmana

Pillai, and he came to the conclusion that the present suit was barred.

2. I shall first deal with the two decisions of this Court mentioned by the learned Judge. Subbier v. Moideen Pitchai AIR 1923 Mad 562 related to

a case where an order was passed overruling the objection of a garnishee and confirming an attachment. The garnishee, i.e., the person in the

position of defendant 4 in this case, did not file any suit within one year. When the debt was sold in execution of the original decree, the same was

purchased by a third person, and that third person, the auction-purchaser, filed a suit against the garnishee to recover the debt. The garnishee then

raised the same contention which he had raised when he got notice of the attachment. "The Court held that as the order confirming the attachment

had been passed rejecting his contention and as he had not filed a suit within one year, he was not entitled to set up the same objections again. That

was what was decided in the case reported in Subbier v. Moideen Pitchai AIR 1923 Mad 562. This is clearly an authority for the proposition that

when after notice to the garnishee orders are passed in such cases confirming the attachment, then unless a suit be filed by the garnishee within one

year to get rid of the effect of the said orders, they will be binding upon the garnishee. The case in Pethu Naidu v. Lahshmana, Pillai, was a case

where also notice was given to the garnishee about attachment. The garnishee denied the debt, and the Court after investigation merely ""recorded

the fact and directed the debt to be sold. The question arose whether the garnishee was bound in such circumstances to file a suit within one year.

After the order of the Court recording the fact and directing the debt to be sold, the debt was sold and was purchased by a third person. That third

person, the auction-purchaser, filed a suit against the garnishee to recover the debt. The garnishee raised the same contentions as he had urged

before. The plaintiff replied that it was not open to the garnishee to raise the same contentions because he had not filed a suit within one year from

the date of the order. The learned Judge, Krishnan, J., who heard the case, held that that case was distinguishable from the case reported in

Subbier v. Moideen Pitohai. Inasmuch as the learned Judge was of opinion that the order merely recording the fact of denial of the debt and

directing the debt to be sold could in no sense be held to be an order passed against the garnishee, he held that the garnishee was not bound in the

particular circumstances of that case to bring a suit within one year and could not therefore be held to be debarred from raising objections which he

could have otherwise raised. I am not able to see any conflict or inconsistency between the two decisions mentioned by me above. In fact, I am

not really able to see what exactly was the difficulty the lower appellate Court was labouring under, in the discussion of this question. That the

provisions of Order 21, apply to questions relating to attachment of a debt has been held by a Full Bench of this Court in Chidambara Pattar v.

Ramaswamy Pattar [1904] 27 Mad. 67. Section 47 will be a bar only so far as questions arising between parties to the suit and relating to the

execution are concerned. It could not be said that the garnishee was a party to the suit, nor defendant 3 here who was never a party either to the

suit or to the original proceedings in connexion with the attachment. Defendant 3 not having been a party to any of these proceedings I fail to see

how it is open to him to say that the present suit is barred by Section 47, Civil P C. The learned advocate for the respondents relies on the

decisions reported in Maharaja, of Benares v. Patraj Kunwar [1905] 28 All. 262. With all respect, I fail to see how any question between the

decree-holder and the present defendant 3 could possibly be brought u/s 47, when the present defendant 3 was neither a party to the suit nor to

the attachment proceedings. In Maharaja of Benares v. Patraj Kunwar [1905] 28 All. 262 the question whether there was an appeal or not was

not raised.

3. As I am clear that the learned Judge was not right in his decision upon the new point raised before him for the first time in appeal viz., that the suit was barred u/s 47, Civil P.C., I reverse the decision of the lower appellate Court and remand the case for fresh disposal. Costs to abide the result. Stamp on the appeal memorandum will be refunded to the appellant on application.