
(1920) 09 MAD CK 0008
In the Madras High Court

M. Govindarajulu Naidoo

APPELLANT

Vs

D.H. Ranga Rao and Others

RESPONDENT

Date of Decision : 07-09-1920

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 32 Rule 7

Citation : AIR 1921 Mad 113 : (1921) 13 LW 97 : (1921) 40 MLJ 124

Judgement

1. The appeal is by the sixth defendant judgment debtor in the suit in which the order under appeal has been passed. The order was passed on an application for execution and it is said that we should set aside the order granting execution on several grounds. It is first argued that as the decree was apparently in favour of a minor, it could not be transferred except with the sanction of the Court, and in support of this contention reliance is placed on Order 32, Rule 7 of the Code of Civil Procedure. That rule refers to an application for the compromise of the suit which has to be sanctioned by the court before which the suit is pending. It is argued that the transfer of a decree on behalf of a minor stands on the same footing because the rule as framed by this court contains the words "" for taking any other action on be half of a minor."" But reading these words in the context in which they occur, they refer to an action taken in the course of the suit in the nature of a compromise or withdrawal or any agreement of that nature in favour of a minor. But a decree is property and there is no reason why the guardian of a minor should not deal with it and exercise the same powers with respect to it as he does with respect to the other properties of a minor, He may on proper grounds make an alienation of such property and if the alienation is bad, it will be open to the minor to set it aside on attaining majority. Even a compromise entered into without the

sanction of the Court as required by O, 32, Rule 7 of the CPC is only voidable at the instance of the minor. See Virupakshappa v. Shidappa and

Basappa I.L.R.(1901) Bom. 109. Our attention was drawn to cases reported in Arunachellam Ghelty v. Kamanathan Chetty and Alamelu Adv.

ILR (1905) Mad. 309 and Ganesh Rao v. Rama Rao (1918) 25 M.L.J. 150. But none of these decisions support the proposition put forward on

behalf of the judgment debtor in this case.

2. The next question we are asked to consider is that of limitation. Even supposing that Article 182 Clause (4) of the Indian Limitation Act of 1908

does not apply-though it is difficult to say why it does not-the application for execution in this case was made on the 18th January 1918 and must,

as pointed out by the learned Judge, be taken to be made within three years from the 12th December 1914 when the decree holder made the

application for transmission of the decree from the Bellary District Court to the original side of this Court, if the time within which the execution was

set aside, i.e., the period from the 8th February 1915 to 24th March 1915 be excluded as we think it should be.

3. It was suggested that such an order could not have been made as there was no application for execution pending; but that is not necessary to

enable a court to suspend execution of a decree for it can do so in anticipation of an application for execution. That is a sufficient answer to the

question of limitation.

4. The next point taken before us is that the transfer of the decree to the petitioner who is a pleader was invalid by virtue of Section 136 of the

Transfer of Property Act (IV of 1882) since it is a transfer of an actionable claim which the law prohibits in favour of pleaders and certain

functionaries of court. Decree does not come within the definition of an actionable claim as given in the Transfer of Property Act (Act IV of 1882),

but partakes of the nature of property.

5. The last point argued before us was that some of the properties had been the subject of a valid family settlement before the attachment was

made; but it is not for the judgment-debtor to raise any such question. If the property in fact belonged to some other person, it was for that person

to raise the objection. We hold that this is not a valid objection.

6. The appeal is dismissed with costs.