

(1974) 04 MAD CK 0014

In the Madras High Court

Case No : Civil Revision Petition No. 2015 of 1973

M. Palaniappa Pillai

APPELLANT

Vs

M.M. Pambana Gounder and Others

RESPONDENT

Date of Decision : 19-04-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 52, 63

Citation : AIR 1975 Mad 245 : (1975) 88 LW 338

Hon'ble Judges : N.S. Ramaswami, J

Bench : Single Bench

Advocate : Sivamani, for the Appellant; Gandhi, for the Respondent

Final Decision : Allowed

Judgement

N.S. Ramaswami, J.—The sixth respondent before the Court below is the revision petitioner before me. The only point that arose for

determination by the Court below is whether it can send for the amount of Rs. 3,984-80. which is in the custody of the Court of the District

Munsif, Erode. to the credit of O. S. 111 of 1969. The first respondent herein, as decree holder in O S. 261 of 1969 on the file of the Court

below (the Court of the Subordinate Judge, Erode), filed an execution petition, got the abovesaid amount attached and then filed E. A. 421 of

1972 for sending for that amount. This application was opposed by two other decree holders against the same judgment debtors. The judgment-

debtors were arrayed as respondents 1 to 4 before the Court below and the two other decree holders were arrayed as respondents 5 and 6

respectively in the abovesaid applicator viz., E. A. No. 421 of 1972. The other two decree holders have obtained decrees in the Court of the

District Munsif, Erode against the same judgment-debtors and they had also

attached the abovesaid amount viz.. Rs. 3,984-80. which is in the custody of the Court of the District Munsif. The Court below (the learned Subordinate Judge, Erode) thinking that Section 63, Civil P. C. is attracted to the facts of this case, has ordered the application for sending for the amount.

2. The learned Subordinate Judge has not realised that that section applies only when the property attached is not in the custody of a Court. Only in cases where the property attached is not in the custody of Court, the question of the Court of higher grade having precedence over a Court of the lower grade in determining any claim regarding the property so attached would arise. But, here, we are concerned with money that is in the custody of a Court. The relevant provision ,that has to be looked into is Order 21. Rule 52, Civil P.C. The main part of the said rule, no doubt, says that the custody Court should hold the property subject to the further orders of the attaching Court. But, there is the proviso (Proviso No. 1) which is in the following terms :

Provided that where such property is in the custody of a Court, any question of title or priority arising between the decree holder and any other person not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

The first respondent before me (the petitioner in E. A. 421 of 1972) is the decree-holder referred to in the abovesaid proviso .Respondents 5 and 6 before the Court below are persons claiming to be interested in the amount now in the custody of the District Munsif. Erode. The question of priority among these three rival claimants is to be determined, undoubtedly, only by the custody Court, for the abovesaid proviso says that the question of Priority or title has to be determined only by the Court which has custody of the property attached. The learned Subordinate Judge has misdirected himself in thinking that Section 63. Civil P. C. is attracted to the facts of this case and ordered sending for the amount on the ground that his Court is of superior grade than the Court which has custody of the money.

3. The question of rateable distribution does not arise at all at present. It is not necessary to consider. in the present civil revision petition, whether

the conditions prescribed u/s 73. Civil P. C. are available in this case and if so, whether the three claimants are entitled to rateable distribution. The only point, as I said, is whether the learned Subordinate Judge, Erode, has jurisdiction to send for the amount which is now in the custody of the Court of the District Munsif. Erode, at this stage. Though the District Munsif has to hold the amount subject to the further orders of the attaching Court, in this case, the learned Subordinate Judge of Erode. proviso No. 1 to Rule 52 of Order 21 would apply and it is the District Munsif. Erode, who has to decide the question of priority amongst the three rival claimants. Only after the District Munsif so decides the priority and in case the first respondent herein is entitled to priority, the Court below can order (and) send for the amount and not otherwise. Under such circumstances, on the execution application filed by the first respondent herein, the proper order that the lower Court ought to pass is giving a direction to the Court of the District Munsif. Erode, to determine the question of priority claimed by the three rival claimants. Accordingly, the civil revision petition is allowed and the matter is remitted back to the Court below for giving suitable directions in the light of the observations above. There would be no order as to costs.