(1917) 12 MAD CK 0009

In the Madras High Court

M. Ponnusami Pillai and Another APPELLANT

Vs

Chidambaram Pillai and Others RESPONDENT

Date of Decision : 19-12-1917

Acts Referred:

Citation : (1918) 7 LW 566 : (1918) 35 MLJ 294

Judgement

1. The first question to be decided in this appeal is whether the assignment pendente lite of the decree of an original court carried with it the right to

execute whatever decree may be passed in appeal. We hold that it did in this case, under the present CPC at any rate.''

2. The change of language in Order 21 Rule 16 compared with SECTION 232 in the old Code is significant. It evidently arose out of the decision

in Muthunarayana Reddi v. Balkarishna Reddi ILR (1896) M. 306.

3. It shows that what is really transferred when a decree is assigned is not the decree itself but the interest of the decree-holder in the decree. The

word '' interest'' must mean the interest as finally determined. Order 22, Rule 10(1) contemplates such an assignment of interest being made during

the pendency of a suit (suit including appeal vide Sub-clause 2 and Rule 11) and the continuance of the suit or appeal by the assignee. The mention

in Ex. A., the deed of Assignment, of the fact that the decree was under appeal clearly indicates the intention of the parties that all rights under the

decree should pass. The assignees (respondents) 2 to 23 in this court) in this case having in fact been brought on record as parties to the appeal

must be deemed to have succeeded to all the rights and liabilities of their assignors (See Chuni Lai v. Abdul Ali Khan ILR 1901 A. 331. In this

view it is unnecessary to invoke the doctrine of lis pendens which applies u/s 52 of the transfer of Property Act to Immovable property, a class of

property into which a simple money decree cannot be treated as falling.

4. The next question is whether a power of attorney given by two members of a Hindu trading family must be deemed to be terminated by the

death of one of the members.

5. Section 253(10) of the Indian Contract Act declares that a partnership is dissolved by the death of a partner. There is no principle of Hindu law

that a joint family is extinguished by the death of one member, but if one member dies without effecting a partition, his undivided share passes by

survivorship to the surviving members of the family. In the present case the uncle Venkatachallam Chetty died without other heirs than his nephew

Chidambaram Chetty with whom he was joint till the day of his death. The whole of his interest therefore devolved on the survivor whose authority

to the agent"" contained in the power of attorney remained unaffected by the death of one of the principals (See Re Sital Prasad 21 C.W.N. 620. It

is not suggested that the surviving principal (1st respondent) has revoked or attempted to revoke his authority under Exn. B. The objection is a

technical one coming only from the judgment debtors. The 1st respondent after being made a pary to these proceedings has taken no part in

supporting this objection. On both points the District Judge''s decision was right. We must therefore dismiss the appeal with costs.