

(1944) 01 MAD CK 0037
In the Madras High Court

Meenakshisundaram Chettiar

APPELLANT

Vs

Velambal Ammal

RESPONDENT

Date of Decision : 21-01-1944

Acts Referred:

Citation : AIR 1944 Mad 423 : (1944) 57 LW 317

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The respondent is seeking to execute a decree passed by an arbitrator appointed under the Co-operative Societies Act by arresting the judgment-debtor. In the lower appellate Court two reasons were given why execution could not proceed. One was that the judgment-debtor could be arrested only if any -sum remained due after the hypothecated properties had been sold. The second was that the decree-holder had done acts which relieved the appellant from his liability as a surety for the debt of his principal. Both these points were decided against the appellant.

2. The second point may be dealt with very briefly, there really being nothing to add to what was said by the lower appellate Court. We are not, after a joint decree has been passed against principal and surety, any longer dealing with a principal and a surety, but with a joint judgment-debtor.

3. The award to be executed consists of three parts. The first is that defendants 1 to 6 do pay plaintiff a certain sum of money. The second is that in default the mortgaged property specified or a sufficient part thereof should be sold; and the third is that if the sale proceeds be found insufficient, the plaintiff might recover the balance from the defendants personally or from his or their other properties. No question of the interpretation of the decree was considered by the, lower appellate Court; for the argument there seemed to turn on the question whether the procedure laid down under the Co-operative Societies Act applied or the rules of the Civil Procedure Code, the lower appellate Court holding that the rules under the Co-operative Societies Act had to be applied. Both the learned Counsel

in this Court agree that the Court is only concerned with the interpretation of the decree as it stands, and not with the question which set of rules have to be applied. The question argued here is whether one should regard the first part of the award as an independent remedy available to the decree-holder, or whether it is to be read only with the other two paragraphs. It is clear to my mind that the ordinary meaning to be attached to this award is that the property should be sold in the first instance and that only if some amount thereafter remained due to the decree-holder, could the judgment-debtor be arrested or his moveable property sold. Mr. Subramania Pillai has drawn my attention to Vellakathala v. Teyyatath Koran AIR 1915 Mad. 414 where the learned Judges say:

We are bound by a uniform course of decisions of this Court to hold that where a decree directs the defendants to pay money to the plaintiff within a certain time and sale of mortgaged property in default, the decree is not only an ordinary mortgage decree but is also a decree for money which may be executed against the other properties of the defendant.

My attention has not been drawn to any decisions which the learned Judges had in mind; and no reason is given in the judgment for the conclusion; but presumably the reason is that the words "that defendant do pay plaintiff" have always meant that the defendants were personally liable for the debt and could be arrested. That the mere use of these words is not however conclusive is indicated by a decision of another Bench of this Court in The Rajah of Kalahasti Vs. Rajah Kumara Venkata Perumal Raj Bahadur Varu, Minor by guardian Mr. W.A. Vardachariar and Another, , where one of the learned Judges says:

A direction that the defendant do pay a certain sum of money, prima facie, imposes a personal liability, though no doubt the words are not conclusive of the question. It may be that other clauses of the decree, if read together with such direction, might show that all that was meant by what is prima facie a direction was to declare the amount for which the defendant was liable, and the only immediate remedy intended to be given was against the mortgaged property.

The learned Judge then went on to say that it was impossible to construe the decree under their consideration in that way. In Vellakathala v. Teyyatath Koran AIR 1915 Mad. 414 the award had apparently only two paragraphs, whereas there are three here, para. 3 further suggesting that the plaintiff could not proceed against the defendants personally unless the sale proceeds were insufficient. Moreover, we are not here interpreting a -decree of Court, in which certain words have often a precise technical meaning; but an award by a layman, the honorary arbitrator appointed by the Registrar of Co-operative Societies, to whose words the Courts should attempt to give their plain meaning.

4. The appeal is therefore allowed and the execution petition dismissed; but in view of the many contentions raised by the judgment-debtor which are without substance, there will be no order as to costs.