

(1924) 11 MAD CK 0085
In the Madras High Court

M.P.P.S.T. Palaniappa Chetty and Others	APPELLANT
Vs	
S.N. Subramania Chettiar and Another	RESPONDENT

Date of Decision : 21-11-1924

Acts Referred:

Citation : AIR 1925 Mad 701 : (1925) ILR (Mad) 553 : (1925) 21 LW 545 : (1925) 48 MLJ 419

Hon'ble Judges : Victor Murray Coutts Trotter, C.J.;Srinivasa Aiyangar, J

Bench : Full Bench

Judgement

Victor Murray Coutts Trotter, C.J.—The rule of law that, where a person's name appears on the face of the record as judgment-creditor and execution of the decree is sought by a transferee of the decree, the decree cannot be executed unless it comes within the words of Order 21, Rule 16 of the CPC and there has been an assignment in his favour either in writing or by operation of law seems to me to be no rule for holding that a person otherwise a stranger to the Court can come forward and allege that the decree was not his (the transferee's) and that he was a benamidar for himself. The learned Judge probably felt himself bound by Manickam Vs. Tatayya and Others, , but I entertain no doubt whatever that that case was wrongly decided and was an unwarranted departure from, and an extension of the words of, the statute. And I accordingly come to the conclusion that this appeal must be allowed with costs in this Court as well as in the Court below.

2. I may add that the circumstances of the case which was allowed to crawl on to the very last day of a long period of limitation are extremely suspicious. But all that we are concerned with is the simple point of law. I ought to add, I think, that it follows from this expression of opinion that we must also dissent from the decision reported in Abdul Kareem v. Chukhun (1879) 5 Cal LR 253.

Srinivasa Aiyangar, J.

3. I agree that the appeal should be allowed with costs. The petitioner applied in

the Original Side not only for execution of the decree under Order 21, Rule 16, but also by an independent Judge's summons for bringing his name on the record as a transferee decree-holder. There is no provision in the Procedure Code for any such application. I am not at all sure whether what is called "bringing on the record the transferee decree-holder" is not really a survival from times previous to the Procedure Code. The scheme of the Code is that the transferee by assignment in writing or by operation of law merely files his application for execution of the decree setting out either in it or in an affidavit he has filed in support thereof that he is the transferee either by operation of law or by any particular instrument in writing and thereupon the Court orders the application for execution or rejects it. Therefore we must treat the present application really as an application under Order 21, Rule 16. The contention of the respondent is that he was entitled to such execution because he was the real owner under the transfer executed to R. M. M. Subramania Chetti who was his agent and who had obtained an instrument in writing transferring the decree to his name, If the case of the petitioner were that the transfer was obtained by the agent in his name but in the Vilasam of the firm of which he was the agent then there could have been no objection whatever to execution being granted on the application of the petitioner because the appearance of the Vilasam in the name of the transferee would really be to the firm or person bearing the Vilasam even apart from its serving to secure the benefit of the transfer to the firm represented by the Vilasam. But in this case the transfer was to the agent personally. The question therefore is whether if there has been a transfer to a particular person under an instrument in writing, any other person is entitled to come to the Court and say that that transferee was a mere benamidar and that he, the applicant, is the real owner of the benefit secured by the transfer. It seems to me that Order 21, Rule 16 is perfectly clear on the point. It speaks of the decree being transferred by assignment in writing or by operation of law and provides that in such cases the transferee may apply for execution. When the statute speaks of "an assignment in writing and "the transferee," the proper construction of the words would necessitate our holding that the transferee referred to is the transferee named as such in the assignment in writing. To hold otherwise would be not to give proper effect to the words of the statute. The learned vakil for the respondent has drawn our attention to Manickam Vs. Tatayya and Others, . We are constrained to hold that it is a wrong decision. I am not able to understand what the learned Judge who delivered the main judgment in the case could have meant when he referred to the word "representative" in Section 244 of the old Procedure Code as comprising the real owner under the transfer of a decree. If such a person was the representative of the decree-holder or his transferee, then it follows that, under the express terms of Section 244, he could have no right of separate suit, but in another sentence in the same judgment the learned Judge speaks of two remedies being open to such a person, that, the real owner under the transfer of a decree, namely, one by way of application to the executing Court and another by way of separate suit, which is obviously opposed to Section 244, Civil Procedure Code. However that may be, we have no hesitation in holding

that that case was wrongly decided. It is also clear that the CPC did really intend to prevent benamidars coming in and making applications to the Court on the general basis of the law relating to benami transaction. In Section 66 of the Code express provision is made for Courts not recognising the benami character of purchases made at execution sales held by Court. We have also no doubt whatever that the express terms of Order 21, Rule 16 excludes any such contention. The earlier case referred to in argument, *Abdul Kareem v. Chukhun* (1879) 5 Cal LR 253, having proceeded on the same basis as that of the judgment in *Manickam Vs. Tatayya and Others*, , should also be held to have been wrongly decided and we therefore refuse to follow it. It would lead to very serious consequence if we should allow the law of benami to have any operation with regard to suits and proceedings and records of Court and, if, only on that ground, it would be desirable to disallow any such contention, we are however fortified in that view by the actual terms of the statute; and therefore it follows that the applicant for execution in this case was wrongly granted execution of the decree.

4. This appeal should be allowed, and the respondents' petition for execution as well as that for bringing himself on the record as transferee decree-holder should be dismissed with costs.