

(1975) 03 MAD CK 0059
In the Madras High Court

Muthu Karuppan Chettiar

APPELLANT

Vs

Chinnaponnu Ammal and Others

RESPONDENT

Date of Decision : 07-03-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 66

Citation : (1975) 2 MLJ 229

Hon'ble Judges : C.J.R. Paul, J

Bench : Division Bench

Judgement

C.J.R. Paul, J.—This second appeal arises in the following circumstances. The appellant filed an execution petition before the learned District Munsif of Tiruchirapalli under Order 21, Rule 66 of the CPC for the realisation of the amounts due under the decree by attachment and sale of the respondent's property. The amount claimed in the execution petition was Rs. 2,220-05P. The respondent (judgment-debtor) contended that the execution petition was not at all maintainable inasmuch as, in the prior execution petition, viz., E.P. No. 126 of 1972, the valuable plantain crops raised by him on an extent of 78 cents had been attached and put in the possession of a receiver appointed by the Court and the receiver had harvested the crop and sold the same, But had not put the sale proceeds into Court, but died after that, and in those circumstances, the decree-holder had to proceed only against the heirs of the receiver for realisation of the amount, and not by attaching his properties once again and bringing them to sale. The learned District Munsif overruled that objection of the judgment-debtor and proceeded with the execution. The learned District Judge of Tiruchirapalli, however, disagreed with the learned District Munsif and held that as far as the judgment-debtor was concerned, the value of the harvested crops had left his hands towards the satisfaction of the decree obtained by the judgment-creditor and if the judgment-creditor had not been paid the value of the crops, it was a matter between him and the officer appointed by the Court and the judgment-debtor cannot be held liable for it. He has further observed that possession of the property having been taken away from the judgment-debtor, he cannot be

proceeded against simply on the ground that the property, for reasons beyond the control of the judgment-debtor, did not reach the decree-holder. He therefore held that a fresh execution petition for realisation of the decree amount without taking into account the property that had been taken away from the hand of the judgment-debtor in the earlier petition was not maintainable.

2. From the records, it does not appear whether the receiver who was appointed by the Court to harvest the crops, sell the same and deposit the sale-proceeds into Court, did actually sell the same and for what amount he had sold those crops. All that is evident from the records is that the receiver took charge of the crops and subsequently he did not send a report to the Court or deposit any sale proceeds in regard to the crops taken possession of by him, but kept on asking for time to submit such a report and eventually he died without submitting a report and without depositing any money, with the result, both the judgment-debtor as well as the judgment-creditor have been put into trouble and the judgment-creditor was constrained to file an execution petition for realising the amount due to him under the decree since he had not been able to realise the amount due under the decree. The judgment-debtor is also put to difficulties because his crops had been taken possession of by the receiver and he has been deprived of those crops which were the means by which the decree could have been satisfied. A similar situation arose in *Orr v. Mulhia Chetti* ILR (1894) Mad. 502 There, a receiver appointed at the instance of the judgment-creditor u/s 503 of the old CPC misappropriated the moneys collected by him by the sale of the harvest of certain villages which harvest had been attached in execution of a decree. The receiver had collected a sum of Rs. 845-2-7. But, instead of remitting the amount into Court, he misappropriated it to his own use, and when criminal proceedings were instituted against him he absconded and was still absconding at the time when the matter came up before this Court. The decree-holder then applied for execution against the judgment-debtor in respect of the balance due under the decree, but the latter resisted the execution proceedings by contending that the decree must be taken to have been satisfied to the extent of the sum of money misappropriated by the receiver. That contention was, however, negatived by the Courts below. *Muttuswami Ayyar, J.*, while considering the question whether, in cases in which a receiver appointed at the instance of the judgment-creditor u/s 503 of the old CPC misappropriated his collections, the decree ought to be treated as satisfied pro tanto on the ground that he is the agent of the judgment-creditor on whose application he was appointed, observed that for any loss arising from his default the receiver is certainly responsible, but when he cannot be proceeded against, the question as between innocent parties is, who ought to bear the loss which is imputable to neither, and the only answer is, that it must devolve on the estate to which the appointment relates. *Muttuswami Ayyar, J.*, further observed that there was also another reason in support of that view, that moneys in the hands of the receiver belong to the Court which appointed him, and are in custodia legis and the receiver cannot spend them except under the orders of the Court and if they are lost whilst in

custody of the receiver, it cannot be denied that the loss must devolve on the estate, for the loss is not imputable to his default or that of any other and that the Courts below, in that case, were in error in introducing a theory of agency. Against the judgment of Muttuswami Ayyar, J. a Letters Patent appeal was filed and since the two Judges who heard the appeal differed, the matter was referred to a Full Bench, in *Muthiah Chetti v. orr* ILR (1897) 20 Mad. 224 But, the Full Bench was deprived of an opportunity of considering the legal question involved, since the appellant, not being represented, did not appear before the Full Bench and his appeal was dismissed with costs. The Judgment of Muttuswami Ayyar, J., therefore stands.

3. Undoubtedly, the receiver appointed by the Court under the provisions of Order 40, Rule 1 of the CPC is an Officer of the Court and is not the agent of the party at whose instance he was appointed. This has been the consistent view taken by all the Courts and if any decision is required in support of that proposition, there is the one in *Collector of Tiruchirapalli Vs. Trinity Bank Ltd., Trichirapalli and Another*, Therefore, the receiver received the money realised by the sale of the harvested produce, not as an agent of the decree-holder or the judgment-debtor at whose instance he might have been so appointed, but as an officer of the Court and the money becomes one in custodia legis. But, if the money which ought to have been put into Court has not been put into Court by the receiver as in this case, and, as in this case, the receiver has died, the question arises as to how the question of imputation of the loss should be decided. To saddle the judgment creditor with the responsibility for [the loss merely because he took out the application for the appointment of the receiver to take charge of the crops, would be inequitable. Likewise, the position of the judgment-debtor also requires sympathetic consideration. His crops had been taken possession of by the officer appointed by the Court and he has been deprived of the value of the crop and in those circumstances, it will be certainly inequitable to order his properties to be attached once again and sold for realisation of the amount. In this case, in the circumstances, the executing Court should have, under the powers vested in it by reason of Order 40, Rule 4 of the Code of Civil Procedure, issued a notice to the heirs of the receiver and held an enquiry as contemplated under that rule and taken all steps to realise the amount, if any, the receiver had collected by the sale of the crops but had not deposited into Court. The executing Court has not done so, but merely ordered execution to proceed against the judgment-debtor for the realisation of the amount due under the decree. Therefore, in the circumstances, I set aside the order passed by both the Courts below and remand the matter back to the executing Court for holding such an enquiry as is contemplated by Order 40, Rule 4 of the Code of Civil Procedure, after giving due notice to the heirs of the receiver and if it is ascertained in that enquiry that the receiver had sold the crops and realised the sale-proceeds and had failed to deposit the same into Court, to take such steps as may be found necessary to realise that amount from the estate of the late receiver in the hands of his legal heirs and if any amount is

realised as a result of such steps being taken to credit the same towards the satisfaction of the decree and allow execution to proceed for the balance, if such sale-proceeds fall short of the amount due under the decree. But, if after such steps having been taken, the amount is found to be unrealisable from the estate of the late receiver in the hands of his legal heirs, the executing Court can proceed against the judgment-debtor for realisation of the amount due under the decree. The second appeal is allowed and ordered accordingly. There will be no order as to costs. No leave.