
(1920) 02 MAD CK 0022
In the Madras High Court

Muthu K.R.V. Alagappa Chetty

APPELLANT

Vs

S.A. Krishnasami Iyer and Another

RESPONDENT

Date of Decision : 23-02-1920

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1

Citation : AIR 1921 Mad 119 : 61 Ind. Cas. 753 : (1921) 13 LW 150

Hon'ble Judges : John Wallis, C.J.;Krishnan, J

Bench : Division Bench

Judgement

1. This is an appeal from the judgment of Mr. Justice Coutts-Trotter in a Bait brought by the Receiver appointed by the Negapatam Subordinate

Judge's Court in execution of a decree obtained by one Tuljaram Rao against one Swaminath Sastry, now deceased. In execution of that decree

the Negapatam Court appointed a Receiver of Swaminatha Sastry's estate to come here and prosecute a cause of action which Swaminatha

Sastry is alleged to have had against the present defendant, Alagappa Chetty.

2. The first question which has been strenuously argued before us by Mr. Anantakrishna Aiyar for the appellant is, that the Negapatam Court had

no jurisdiction to appoint a Receiver in execution to come and sue here. We are not in this case dealing with the propriety of appointing a Receiver

in a case like this. All we are dealing with is the question whether the Court had jurisdiction to appoint a Receiver in the execution of its decree and

we are unable to say that the appointment was without jurisdiction. The new Code has made a difference in this respect whereas u/s 503 of the old

Code there was a general power to appoint Receivers, among other things, for the realization of property, a Receiver under that Section could only

be appointed in respect of property which was either "the subject-matter of the suit or under attachments." Section 51 of the present Code

prescribes that "the Court may order execution of the decree (d) by appointing a Receiver," and in Order XL, Rule I which corresponds to Section

503 of the old Code, the words "limitation as to property which was the subject matter of the suit or under attachment," are omitted. Therefore,

neither in the body of the section nor in the rule is there any limitation such as there was in the old Code, and we are not now called upon to

consider the question as to the operation of Clause (b) of Section 51 which is dealt with in *Begg Dunlop & Co. v. Jagannabh Marwari Ind. Cas.*

417. Nor have we to decide whether the Receiver ought not to have been appointed. The system of appointing Receivers in execution is borrowed

from the English procedure. The rule in England is, that Receivers will not be appointed except for special reasons. Therefore, it might have been

better in this case if a Receiver had not been appointed. However, we cannot say that it was done without jurisdiction and, therefore, we agree

with the judgment of Mr. Justice Abdur Rahim on this point.

3. N.B.--The remainder of the judgment is not material for purpose? of this report.--Ed.