
(1919) 09 MAD CK 0019
In the Madras High Court

Muthusami Asari		APPELLANT
	Vs	
Angayakannu Asari		RESPONDENT

Date of Decision : 01-09-1919

Acts Referred:

Citation : 54 Ind. Cas. 807 : (1920) 11 LW 115

Hon'ble Judges : Krishnan, J

Bench : Single Bench

Judgement

Krishnan, J.—The money in question was paid by the respondent (2nd defendant-petitioner) when execution was taken out against the

family properties in his hands. The warrant of attachment is no doubt not very clear about what property was to be attached, but I think the

meaning was to attach properties in his possession which were family properties. That being so, respondent can obtain a refund of the money paid

by him only if he shows that certain properties belonging to him exclusively as his self-acquisition were threatened to be attached and to prevent

such attachment he made the payment in question and that he had no family properties in his hands at all at the time of attachment. I am unable to

accept the Subordinate Judge's disposal of the case on affidavits as satisfactory. The question should be properly tried on evidence. It is only if the

respondent proves that his payment was an involuntary one occasioned by the decree being attempted to be executed against his own properties

improperly that he will be entitled to the refund claimed See *Kanhaya Lal v. National Bank of India Ltd.* 18 Ind. Cas. 949 : 40 C.P 598 : 17

C.W.N. 641 : (1913) M.W.N. 406 : 13 M.L.T. 406 : 11 A.L.J. 413 : 17 C.L.J. 478 : 15 Bom.L.R. 472 : 184 P.L.R. 1913 : 25 M.L.J. 104 : 40

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2. The order of the Subordinate Judge is set aside and the case remanded to him for fresh disposal according to. law. Costs will abide and follow the result.