

(1922) 09 MAD CK 0016
In the Madras High Court

Nandigam Gangayya

APPELLANT

Vs

Madupalli Venkatramayya and Others

RESPONDENT

Date of Decision : 06-09-1922

Acts Referred:

Citation : AIR 1923 Mad 230 : (1923) 45 MLJ 80

Hon'ble Judges : Venkatasubba Rao, J;Krishnan, J

Bench : Full Bench

Judgement

Krishnan, J.—This case arises from an application put in by the appellant before us to exclude from Court-sale a property which he had

purchased while it was under attachment under an agreement made between him, the decree-holders, and the judgment-debtor that, on the

purchase money Rs. 200 being it was prevented from being paid out through an injunction obtained in another suit, O.S. No. 23 of 1918. The

Assistant Commissioner did not appreciate the fact that payment into Court was a good legal discharge of the decree. If he thought that the

judgment debtor was responsible for the decree holder failing to realise the fruits of his decree and to get interest on the money paid into Court, his

proceedings in allowing the decree-holder to claim interest for the period when the money lay in Court may have been in accordance with the

equities of the case. In any case the decree holder was entitled to recover the costs of the previous execution petition and the costs incurred in the

High Court in the Civil Miscellaneous Petition on the decree of the Agent's Court.

2. The Assistant Agent's order should have dealt with the claims of the parties in the execution petition and should have adjusted the equities. It did

not do so but I am unable to treat it as manifestly erroneous or unjust. We must

therefore decline to interfere and dismiss this petition with costs.

Venkatasubba Rao, J.

3. The Assistant Agent of Bhadrachalam made an order allowing execution at the instance of the plaintiff. The defendant filed an appeal from this

order to the Agency Commissioner, and the latter returned the appeal memorandum stating that no appeal lay to his Court from orders made by

his subordinates in execution. The Agency Commissioner was right in the view that no appeal lay to his Court. There is no provision in the Agency

Rules for appeals against orders passed in execution. See *The Rani of Tuni v. The Maharajah of Jeypore* (1922) 16 L.W. 8 .

4. Rules 8, 9, 13 and 14 refer to decrees and not to orders passed in execution or other orders of a miscellaneous character. The Agency

Commissioner having acted properly in returning the appeal memorandum the defendant could not present a valid petition against the proceedings

of that officer under Rule 24. But under Rule 25 the petitioner should have requested the Agency Commissioner to make a reference to the

Government as in my opinion the words ""in all cases not provided for by the rules"" are wide enough to cover a case of this kind. If the order in

execution is one made by the Agency Commissioner himself under Rule 24, the aggrieved party may submit a petition to the Government who may

refer it to the High Court. It therefore follows that orders in execution or other order of a miscellaneous character, if passed by an Agency

Commissioner, are not absolutely final, but they are liable to be revised by the High Court under Rule 24. Can it be said that orders of his

subordinates of a similar character are entirely immune from interference by a higher authority?

5. In my opinion Rule 25 provides the remedy, and the defendant was entitled to ask the Agency Commissioner to make a reference to the

Government under Rule 25.

6. Assuming, but not deciding, that the High Court can exercise its powers of superintendence to revise an order so erroneous as manifestly to

amount to an injustice as held in *Brindabun Chunder Chaubay v. Babu Gowr Chandra Rai* (1920) 56 I.C. 155 (Pat.) . I do not think that a case

has been made out for our interference under that section.

7. On the 7th August 1918 the defendant filed a suit against the plaintiff and

made an application for the issue of a temporary injunction to restrain the plaintiff from executing the decree in question, and on the 19th August the Assistant Agent passed an order in the following terms : ""The injunction sought for will be issued if defendant pays money into Court. 15 days" time for payment."" Having obtained this order, the defendant paid into Court the full amount of the decree on the 24th August 1918. On the 3rd September 1918 he applied that the plaintiff should be restrained from receiving the amount that had been paid into Court and on the same date a temporary injunction was accordingly issued pending the disposal of the suit instituted by the defendant. The temporary injunction was dissolved in 1920 when the suit filed by the defendant was finally dismissed.

The defendant's present contention is that he is not liable to pay interest on the decree amount from the date he paid it into Court. The plaintiff's contention on the other hand is that the defendant made the payment after having first obtained the order dated 19th August which practically operated to prevent the plaintiff from withdrawing the amount from Court and that a payment made in such circumstances is not a valid payment. It must be observed that the defendant did not put forward his case properly before the Assistant Agent, who was not in a position in consequence to direct his mind to the appropriate issue which these rival contentions would raise. The summary disposal of the Assistant Agent may be accounted for by this fact. But apart from the manner in which it has been disposed of, I am not prepared to say that the order is manifestly unjust.

The amount throughout lay in Court and carried no interest. The defendant's suit having been ultimately dismissed it must be assumed that he was accountable for damages to the plaintiff in respect of the temporary injunction obtained by the defendant restraining the plaintiff from withdrawing the amount. In a proceeding properly constituted, the plaintiff would probably be entitled to damages, and the measure of damages would be the interest which he lost; and in this view the order of the Assistant Agent is equitable. I therefore agree that this petition should be dismissed with costs.