

(1933) 01 MAD CK 0023
In the Madras High Court

N.M. Kadir Meera Saheb Taraganar

APPELLANT

Vs

N.M. Pir Mahomed Taraganar and Others

RESPONDENT

Date of Decision : 20-01-1933

Acts Referred:

Citation : AIR 1933 Mad 523 : (1933) 38 LW 221 : (1933) 64 MLJ 732

Hon'ble Judges : Pakenham Walsh, J

Bench : Division Bench

Judgement

Pakenham Walsh, J.—One Pir Mahomed Taraganar executed a power-of-attorney in favour of one N. K. Mahomed Moideen Taraganar

to conduct certain suits for him and realize the money. As the latter had advanced him money, and moneys realized by the agent were made a sort

of charge for payment of the debt, and the power-of-attorney was not to be cancelled,, until the dues had been settled, the agent brought suits on

the two mortgage deeds on behalf of the principal and, obtained decrees. Pending proceedings for sale of the mortgaged properties, the decree-

holder put in applications stating that the decree amounts had been paid in full and satisfaction might be entered. His applications to enter up

satisfaction were put in on 18th March, 1930. On 27th March, 1930, the agent assigned the decrees to one Kadir Meera Saheb, the appellant in

these proceedings. The appellant put in an application under Order 21, Rule 16 to permit him, after recognizing his assignments, to oppose the

applications to enter up satisfaction as, they were collusive documents. These two petitions filed under Order 21, Rule 16 were dismissed both by

the original appellate Courts and the petition to record satisfaction of the decrees, was allowed by both Courts. Against these orders the present

appeals are filed.

2. The learned District Judge held that neither the question whether the appellant was the assignee-decree-holder nor the question whether the

entering up of satisfaction of the decrees was collusive or not could be gone into by the executing Court, because it was not a matter between the

parties to the suit. On the first point there seems to be a conflict of authorities. I do not think, in the view which I take on the second point, that

there is any necessity to discuss it, because I am perfectly clear that the application to execute the decrees cannot be granted because satisfaction

of the decrees has been recorded. The argument raised for the appellant is that the judgment-debtor knew of the assignments of the decrees by the

decree-holder under power-of-attorney to the agent and that he was therefore not entitled to make any payment to the decree-holder., I may note

in passing that there is no clear statement ""in the power-of-attorney that the agent has power to transfer decrees. However, as the learned District

Judge has stated in his judgment, that it was not controverted that full power was given to the agent to assign decrees, I will discuss the matter on

the assumption that the agent had this power. Order 21, Rule 1 states only three ways in which the judgment debtor may make payment. It is.

expressly stated that it shall be in one of these three ways (a) into the Court whose duty it is to execute the decree, or (b) out of Court to the

decree-holder, or (c) other-""wise as the Court which makes the decree directs. There is absolutely no provision here for the judgment-debtor

paying a third party merely because he happens to know of the assignment of the decree in the latter's favour by the decree-holder; and it is

perfectly clear that if he were to make such payment,-he would run the risk of having to pay money over again to the decree-holder. He cannot be

asked to involve himself in disputes between the decree-holder and somebody to whom the former has assigned the decree. Order 21, Rule 16

definitely provides that the judgment-debtor shall have notice before the assignee-decree-holder is permitted by the Court to execute the decree,

and he is entitled to raise objections. On the view urged by the appellant he will be shut out of his right completely. The decree-holder has only got

to send a notice that he has assigned the decree and even if apparently he has already satisfied the decree, the judgment-debtor is bound to pay the

assignee and not the decree-holder. He cannot object to the assignment because he has no locus standi until the decree-holder applies under Order 21, R 16, for permission to execute the decree. This means that the judgment-debtor either has to make payment to a person not authorised by the Court or to refrain from discharging the decree at all until the assignee-decree-holder asks for permission to execute the decree. It is needless to say that there is absolutely no authority for this proposition. As regards the satisfaction of the decree which the decree-holder asks the Court to record, it is not open to the Court to go into the question whether this satisfaction was intended to defraud or defeat the rights of some third party who, is not before it as a party to the suit, to whom the decree-holder is alleged to have assigned his interest under the decree. That matter must obviously be agitated in a separate suit. In the result the orders of the Lower Court are confirmed and all the appeals should be dismissed with costs in Appeal No. 246 of 1931 and no costs in other appeals.