
(1942) 01 MAD CK 0019
In the Madras High Court

Palamalai Chettiar and Others		APPELLANT
	Vs	
P.A.L.V.V.R. Ramanathan Chettiar and Others		RESPONDENT

Date of Decision : 29-01-1942

Acts Referred:

Citation : AIR 1942 Mad 442 : (1942) 55 LW 212 : (1942) 1 MLJ 439

Hon'ble Judges : King, J

Bench : Division Bench

Judgement

King, J.—The subject-matter of this appeal is a sum of Rs. 1,584-7-1 lying in the Court, of the Subordinate Judge, Devakottai, to the credit

of O.S. No. 108 of 1933. The facts are that certain properties were sold in execution of the decree in that suit and the sum of approximately Rs.

37,000, realised. The judgment-creditor and two other creditors of the judgment-debtors filed a joint statement in which the amount due to them in

satisfaction of their respective decrees on the date of the confirmation of sale is entered. The total of these three amounts comes to Rs. 35,000

odd, and the balance remaining in Court is the subject-matter of this appeal.

2. It appears that after the sale had been confirmed and this statement had been received from the three decree-holders, a suit was filed by the

judgment-debtors in 1936 for partition and there was an application by the auction-purchaser of the property at the sale in question for an

injunction against the distribution of the sale proceeds. An injunction was issued and was not finally dissolved until two or three years had elapsed.

This application by the judgment-debtors for the repayment to them of the surplus money lying in Court was opposed by the judgment-creditors

who contended, that as they had not been able to draw out the money until the

dissolution of the injunction passed in connection with the auction purchaser's application, interest on their decree amount as it stood on the date of the confirmation of sale should be allowed and therefore that the money still lying in deposit should be paid out not to the judgment-debtors but to themselves. Upon their opposition the learned Subordinate Judge of Devakottai dismissed the application of the judgment-debtors for re-payment of the money.

3. It was contended in the first instance as a preliminary objection that no appeal lies against this order. It was argued that the order was merely one dealing with the payment out of some money and, was one passed on an application filed specifically u/s 151, CPC and that no appeal lies against an order passed under that section by a Court in the exercise of its inherent powers. No doubt that is so, but this application is equally one u/s 4-7, Civil Procedure Code. It is clear that the main subject-matter of the application was a question regarding the right of the decree-holders to obtain further sums by way of interest upon the decree amount. That clearly falls within Section 47 as relating to the discharge or satisfaction of the decree. We therefore over-rule the preliminary objection.

4. Upon the merits of the appeal we, think that- the order of the lower Court is wrong. The lower Court has based its order awarding interest to the judgment-creditors almost solely upon the fact that they were not to blame for the long delay in the final realisation of the money. There is, however, no discussion in the order of the learned Subordinate Judge of the position of the judgment-debtors. We are of opinion that if no further facts emerge, the date upon which the sale is confirmed is the date upon which the money due by the judgment-debtors under the decree is paid by them and realised by the judgment-creditors through the Court which has been acting for them upon their application. It is only if there is some subsequent action on the part of the judgment-debtors during the period between the receipt of the money into Court and the actual payment by the Court of the money to the judgment-creditors which prevents or postpones that payment, that any question can arise of any further liability resting upon the judgment-debtors under the decree. It has not been shown in this case that when they filed their suit in 1936, the judgment-debtors in any way attempted to impugn the decree obtained by the judgment-

creditors in this suit or the sale held in execution of the decree. It is indeed extremely difficult to believe that any such attempt could possibly have been made because the facts show that the judgment-debtors did not avail themselves of the opportunity to apply to set aside the sale under 0, 21, CPC and must have realised the impossibility of attempting to do so by any partition suit. It is unfortunate no doubt for the judgment-creditors that the auction purchaser applied for an injunction regarding the payment of this money, and unfortunate that the Court to which the application was made granted such an injunction for what appear to us insufficient reasons. But so long as no blame can attach to the judgment-debtors we cannot see under what principle they can be compelled to pay interest for any further period beyond the date when payment was made into Court in satisfaction of the decree. We accordingly set aside the order of the learned Subordinate Judge and direct that execution application No. 360 of 1940, be allowed with costs throughout and a cheque issued to the appellants for the sum claimed by them, subject to the furnishing of the security undertaken by themselves in their own application, or if the money is no longer available in Court it is hereby declared that the appellants are entitled to recover it from the respondents.