(1926) 02 MAD CK 0021

In the Madras High Court

Pandiri Viranna APPELLANT

Vs

Grandhi Sattiraju and Others RESPONDENT

Date of Decision : 25-02-1926

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 64

Citation : AIR 1927 Mad 445 : (1927) 52 MLJ 157

Hon'ble Judges : Waller, J;Devadoss, J

Bench : Full Bench

Judgement

Devadoss, J.—The only point in this appeal is whether a person who obtains a mortgage of the judgcent-debtor''s property after the date of

attachment and before the date of sale is entitled to apply under Order 21, Rule 89 for setting aside the sale. The learned DistrictJudge held that he

could not, relying upon a decision of Mr. Justice Odgers in Subba Reddi v. Jayaramayya (1923) 17 LW 680. It was held in that case that by virtue

of Section 64, Civil Procedure Code, any transfer of property attached was void and therefore the person who acquired a title after attachment

had no locus standi to apply under Rule 89. With very great respect we are unable to agree with Odgers, J. Section 64 makes any private transfer

of property or delivery of property attached or any interest therein void against all claims enforceable under the attachment. Where a decree-

holder attaches the property of his judgment-debtor any transfer after the date of attachment is void against him. He could ignore such transfer and

bring the property to sale as if there was no transaction in respect of the property. If the transferee or the mortgagee of the judgment-debtor''s

property pays off the whole of the decree amount the attachment will be raised. Under Order 21, Rule 55, Where the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into Court or

satisfaction of the decree is otherwise made through the Court or certified to the Court... the attachment shall be deemed to be withdrawn.

2. Under Rule 69, Clause 3, Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are

tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid into Court

which ordered the sale.

3. This rule enables the judgment-debtor to pay the decree amount and costs into Court and avert the sale and Rule 55 says that if the amount of

the decree and costs and charges are paid, the attachment shall be deemed to be withdrawn. The result of these two rules is that as soon as the

whole of the decree amount and costs and charges are paid into Court not only the sale is stopped but the attachment shall be deemed to be

withdrawn. Can it be said that a person who buys the property of the judgment-debtor or who acquires a title in the property after attachment and

before sale is in a worse position than the judgment-debtor himself? To hold that there is a distinction between the case of a judgment-debtor and

that of a person acquiring interest from him with regard to Rules 55 and 69 would be to make the latter to pay the decree amount and costs and

charges in, the name of the judgment-debtor. We do not think that the Legislature intended to make any such distinction between the judgment-

debtor and a person who acquires an interest in the judgment-debtor''s property after attachment and before sale.

4. The explanation to Section 64 relied upon for the contention that Rule 89 does not apply to a person who acquires any'' interest in the

judgment-debtor''s property after attachment and before sale, is as follows:

For the purpose of this section claims enforceable under an attachment include claims for the rateable distribution of assets.

5. The explanation is to be considered with regard to the state of the law at the time when it was enacted, and cannot be held to control the clear

provisions of Rule 89. If the Legislature intended that when an attachment of Immovable property is made and the decree-holders who apply for

rateable distribution should have the benefit of such attachment, and that the transferee from the judgment-debtor should not by paying off the

decree-holder attaching his property release the property from attachment except by paying in full the amount due to all the decree-holders who

have applied for rateable distribution, it should have said so in clear terms. As observed by Kumaraswami Sastri, J., in Annamalai Chettiar v.

Palamalai Pillai 33 MLJ 707 (FB):

Assuming that the Legislature intended the attachment u/s 64 to enure for the benefit of all persons entitled to rateable distribution who had applied

for execution prior to the private alienation it has not gone far enough when it introduced the explanation to Section 64 worded as it is and made no

provision for the continuance of the attachment in Order 21 in cases where the attaching creditor was paid off. The result is not very happy, but the

remedy is in the hands of the Legislature.

6. In that case it was held by a Full Bench that the decree-holders who had attached the property of the judgment-debtor were not entitled to

question the alienation of the property by the judgment-debtor after attachment and before sale. Section 64 makes any private transfer or delivery

of the property attached or of any interest therein void against all claims enforceable under the attachment, but under Rule 83, any private sale,

mortgage or lease of the judgment-debtor''s property with the sanction of the Court is valid.

7. The person who acquires an interest before attachment need not apply under Rule 89, for, if the transfer of property or of any interest therein is

a bona fide and valid one the transferee acquires a good title and the attachment would not take away the right of such person and therefore he

need not apply under Rule 89 vide Erode Manikkoth Krishnan Nair v. Puthiedeth Chembakkoseri Krishnan Nair. Where a judgment-debtor

purports to convey or transfer any interest in Immovable property already sold in execution of decreo he can convey no title to the transferee and

the transferee cannot be said to acquire an interest in the property for all his interest has been sold and he has no interest to convey or transfer.

Rule 89, does not apply to a transfer after sale for it clearly says.

Holding an interest therein by virtue of a title acquired before such sale.

8. Section 310-A of the CPC of 1882, corresponding to Rule 89, was held applicable to a purchaser subsequent to attachment and prior to sale

under the attachment Mulchand Dagadu v. Govind Gopal. It was held by a Full Bench of this Court in Sundaram v. Mausa Mavuthar that a

judgment-debtor who after the sale transfers his interest in the property sold in execution of the decree retains sufficient interest within the meaning

of Order 21, Rule 89. to allow him to apply under the rule and the purchaser of that property after Court-sale is precluded from applying under the

rule. The principle of these decisions is that a transfer of interest in Immovable property after attachment and before sale is void only against the

decree-holder who applies for attachment and if his decree amount is paid in full with costs and charges of attachment and sale, the transferee

acquires a good title. This point has been specifically decided in Gosto v. Sankar. The learned Judges Sir Asutosh Mookerjee and Mr. Justice

Cuming observed at page 129

If an application is made under Rule 89, and is allowed, the first condition for the grant of the application is that the entire decree should be

satisfied. Consequently by no stretch of language can it be said that when an application is made in conformity with Rule 89, any question arises as

to a claim enforceable under the attachment within the meaning of Section 64.

9. Mr. A. Krishnaswami Aiyar''s contention is that the auction-purchaser ought to be protected and therefore any person who acquires any interest

in the property after attachment should not be held to be entitled to apply under Rule 89. His argument is that the auction-purchaser purchased the

property and his right should not be defeated by his being paid off 5 per cent, of the purchase maney and he relies strongly upon the explanation to

Section 64 as supporting his contention. This argument overlooks the fact that the purchaser in Court auction does not acquire a title to the

property till the sale is confirmed and such sale would not be confirmed till the whole purchase money is paid by him. It is well settled that 25 per

cent paid by the auction-purchaser would not be considered assets within the meaning of Section 73. It is only after the full amount has been paid

that the decree-holder would be entitled to proceed against the money paid by the auction-purchaser. It cannot there-tore be said that the auction-

purchaser acquires a title merely by paying his amount of his bid and he knows that the sale is subject to confirmation by the Court and is liable to

be set aside if the judgment-debtor pays the decree amount and costs and charges under Rule 89 or for fraud or irregularity under Rule 90. The

auction-purchaser therefore cannot complain if the sale is set aside by the Court and Section 64 does not protect him against any relief claimable

by the judgment-debtor either under Rule 89 or under Rule 90. The relief open to the judgment-debtor under Rule 89 cannot be denied to a

person who acquires a title to the property before sale and after attachment.

10. The appellant, therefore, is entitled to have the sale set aside under Rule 89. The appeal is allowed with costs to be paid by respondents 1, 2,

and 5 and 6.

Waller, J.

11. I agree.