
(1935) 12 MAD CK 0038
In the Madras High Court

(Paparaju) Veeraghavayya

APPELLANT

Vs

Atluri Venkata Lakshmayya and Another

RESPONDENT

Date of Decision : 06-12-1935

Acts Referred:

Citation : AIR 1936 Mad 468

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This appeal (A.A.A.O. No. 196 of 1931) is preferred against an order in execution and, on a preliminary objection that no appeal lay, the suit being one of a small cause nature, it was conceded for the appellant that the filing of this appeal was an error and that it should have been filed as a civil revision petition, the question raised being one of jurisdiction. I. have therefore treated the case as a civil revision petition and gone into the legal question raised. The facts are that there was a compromise of an execution proceeding and it is alleged that the compromise entailed lump sum payment in cash and the execution of a promissory note by a third party. The appellant contended that though he gave a receipt as if he had received the full amount under the decree, actually the portion represented by the promissory note was not received and the promissory note was not executed. The appellant therefore filed a memorandum in Court certifying satisfaction only to the extent to which he admitted receipt of cash and reciting trouble which had arisen regarding the promissory note. The executing Court apparently thought it better to hold a full investigation into the facts and directed an application to be filed by the appellant and gave notice to the judgment-debtor. Thereupon, the judgment-debtor filed a counter-affidavit in which he contended that full satisfaction ought to be recorded. Upon this the Court enquired into the merits, found that the decree was fully satisfied and ordered accordingly. There was an appeal which was dismissed.

2. It is contended here that when a decree-holder certifies part satisfaction, the

executing Court has no option but to record part satisfaction and cannot enter into an enquiry as to whether more has been paid than that which the decree-holder certifies. It is undoubtedly correct that Sub-rule (1), Order 21, Rule 2, Civil P.C. does not in terms contemplate any such inquiry as that which was instituted by the executing Court in this case. However granting that there is no specific provision in the Code for such an inquiry, when as in this case the materials put before the Court by the decree-holder were such as to put the Court on notice that there was a dispute between the parties as to whether the amount certified was less than the amount which had been actually paid, I see no positive illegality in the action of the executing Court in giving notice to the judgment-debtor and going into those matters, though it is true that the Code contains no specific provision for such action. Even assuming that the executing Court acted irregularly in giving notice to the judgment-debtor, when the judgment-debtor came into Court and filed a counter-affidavit asserting that the decree was fully-satisfied, the Court has a discretion to treat this counter-affidavit as an application under Sub-rule (2), Order 21, Rule 2 and, if it chooses so to treat it, the subsequent finding in accordance with the allegation in the counter-affidavit may legally be treated as a record made under Sub-rule (2), Order 21, Rule 2. In this view I hold that the Court's order was not passed without jurisdiction and I dismiss the petition with costs.