

(1954) 11 MAD CK 0003
In the Madras High Court
Case No : A.A.O. No. 389 of 1950

Periakaruppan Chettiar and others

APPELLANT

Vs

Madhava Iyer, (since deceased) and others

RESPONDENT

Date of Decision : 26-11-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 57(1)

Citation : (1954) 11 MAD CK 0003

Hon'ble Judges : Panchapakesa Ayyar, J

Bench : Single Bench

Advocate : K.S. Desikan, for the Appellant; R.V. Seshadri, for the Respondent

Final Decision : Dismissed

Judgement

Panchapakesa Ayyar, J.—This is an appeal by the petitioners in E. P. No. 65 of 1949 in O.S. No. 1 of 1929 against the order of dismissal

of the E.P. by the learned District Judge of South Arcot on 10th November 1949. In that E. P. items 6 and 7, covered by E. P. No. 16 of 1941

were attempted to be brought to sale. The facts are briefly these: The appellant, the decree-holder in O. S. No. 1 of 1929, had filed E. P. No. 16

1941 in the lower Court. On 15th November 1943, the District Judge had passed the following order :

Proclaim and sell items 3, 6, 7, 8, 13 and 15 on 13th January 1944. Further hearing 17th January 1944; attachment to subsist.

2. On 15th November 1943, the decree holder's vakil had prayed that lots, 3, 6, 13 and 15 alone might be sold in the first instance and that the

sale of the other attached properties, including items 6 and 7, might be stopped, keeping the attachment pending. It was in accordance with that

prayer that the District Judge passed the order "attachment to subsist that day.

On 13th January 1944, E. P. No. 16 of 1941 was called, and, as sale batta was not paid, the E. P. was dismissed by the District Judge by an order passed that day itself. There was no mention in the order dated 13th January 1944 about the further subsistence of the attachment, or any order that all attachment do cease. The learned District Judge upheld the contention of the judgment-debtor in E. P. No. 65 of 1949 that there was no subsisting attachment on these two items. He dismissed E. P. No. 65 of 1949 and held that the order dated 15th November 1943, directing the attachment to subsist in respect of these and other items, was only an interim order which would endure for the life of E. P. No. 16 of 1941, and that the attachment automatically ceased the moment the E. P. was dismissed on 13th January 1944, owing to the decree holder's default to pay the sale batta. He also held that the judgment-debtors were not precluded from raising this point in E. P. No. 65 of 1919 in spite of the intervening E. P. No. 34 of 1947. So he dismissed E. P. NO. 65 of 1949 with costs. Hence this appeal.

3. I have perused the entire records and heard the learned Counsel on both sides, Mr. K. S. Desikan, for the appellant, simply relied on the non-mention in the order of the District Judge, dated 13th January 1944. that the attachment do cease. That will not help him. The wording of O. 21. R.

57 (1) is clear on the point, it runs as follows :

Where any property has been attached in execution of a decree and the Court hearing the execution application either dismisses it or adjourns the proceedings to a future date it shall state whether the attachment continues or ceases provided that if the Court dismisses such an application by reason of the decree-holder's default, the order shall state that the attachment do cease.

4. Here the E. P. was dismissed owing to the default of the decree holder to pay the sale batta. It follows that the Court was consequently bound to declare that attachment of all the properties in that E. P., including these two items, do cease, and its failure to state specifically that the attachment do cease will not be of any avail to the decree-holder in view of the proviso abovementioned.

5. This point came up directly for decision before a bench of this Court consisting of Satyanarayana Rao and Panchapagesa Sastri, JJ. reported in

Venkata Rao v. Surya Rao Bahadur Garu 26 L.W. 264 at 268. The learned Judges observed as follows:

Would the fact that the Court did not state that the attachment do cease prevent the dismissal of the petition from operating to terminate the

attachment ? The rule apparently assumed that the Court would do its duty in following the clear and mandatory directions contained in it. If the

directions are followed, the Court is bound to state the consequence of dismissal for default of the decree-holder. Some of the High Courts, in the

rule they framed, clearly stated that the attachment would cease if the Court omitted to give any direction. It would have been better if some such

clause were also added by this Court, but in our opinion the fact that the Court failed in carrying out its duty would not prevent the cessation of the

attachment. The language of the clause clearly does not make it a condition precedent for the termination of the attachment that the Court should

make an order. It merely directs the Court to state the consequence of the dismissal, that is, the termination of the attachment. It is the dismissal by

reason of the decree-holder's default that brings about the termination of the attachment and the Court is merely directed to state in the order that

consequence. If the Court omitted to state so, it would not prevent the attachment from coming to an end.

6. This disposes of Mr. Desikan's contention. A further contention, that the judgment-debtors could not be allowed to raise this contention before

the lower Court, in view of his alleged previous conduct in E. P. No. 34 of 1947, was not pressed before me, and has no substance. It follows that

this Civil Miscellaneous Appeal has to be dismissed, it is hereby dismissed with costs.