

(1936) 02 MAD CK 0014
In the Madras High Court

Periakatha Nadar

APPELLANT

Vs

Mahalingam alias Katteri Malayapillai Nadar (deceased) and
Others

RESPONDENT

Date of Decision : 19-02-1936

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 16

Citation : AIR 1936 Mad 543 : 166 Ind. Cas. 922 : (1936) 44 LW 336 : (1936) 71 MLJ 161

Hon'ble Judges : Pandrang Row, J

Bench : Division Bench

Judgement

Pandrang Row, J.—This is an appeal from the order of the Additional Subordinate Judge of Madura dated 21st October, 1935 recognising

the transfer of the decree in O.S. No. 147 of 1928 in favour of the petitioner and directing execution to proceed. The decree in question was

obtained by the receiver appointed in O.S. No. 71 of 1920 and that decree constituted one of the assets of the partnership, the affairs of which

were involved in O.S. No. 71 of 1920, the receiver himself being one of the partners. The appellant in this appeal is also one of the partners. It

was found in August 1931 by the Court before whom this suit, O.S. No. 71 of 1920, was pending that the receiver appointed was unable to do

anything to protect the assets of the firm from being lost by the bar of limitation. Accordingly it decided to assume the reins of control in its own

hands. By an order dated 20th August, 1931 it was decided by the Court that as the outstandings were getting time-barred they should be sold in

the Court premises by a Commissioner to be appointed and that the bidding at the sale would be confined to the parties to the suit, and the same

order directed the receiver not to do any work as receiver after 31st August. The preamble to this order clearly sets forth the circumstances which

led to the making of this order. It runs as follows:

These are parties who will not merely cut off their noses to spite their faces, but will cut off their own heads to spite their bodies. They have been

wrangling for years, instead of dividing the outstandings, or dividing the sale proceeds of their outstandings and going home. In the meanwhile the

outstandings are getting barred.

2. There can be no doubt that it was within the jurisdiction of the Court to dispense with the receiver and to take such steps itself as were

necessary for the protection of the assets of the partnership. The method employed by the Court, namely to sell the assets by sale in Court to such

of the partners as were willing to bid cannot also be said to have been without jurisdiction. In any case it is not contended that the order was

without jurisdiction and the propriety of the order cannot be questioned at this stage as that order has become final. In accordance with that order

the Commissioner had actually sold the decree now in question, namely, the decree in O.S. No. 147 of 1928 and the purchaser of that decree was

the second defendant, one of the partners. The sale was held on the 25th September, 1931, and there was an order passed by the Court on 30th

September after hearing the parties approving of this sale along with other sales held at the same time. The purchaser, thereupon, applied to

execute the decree as transferee-decree-holder in E.P. No. 181 of 1932. Notice of this petition was given to the judgment debtors as well as the

appellant and none of them put forward any objection to the execution of the decree by the 2nd defendant purchaser. The ex-receiver, that is to

say, the plaintiff, put forward an objection to the effect that the second defendant has no locus standi to execute the decree in the absence of any

assignment in writing in his favour. This objection, however, was not decided by the Court as the execution petition itself was not proceeded with

further and was struck off the file. Sometime after the petition was struck off the second defendant purchaser again applied to the Court and again

the Court confirmed the sale afresh. It was after the second confirmation of the sale that the present petition to execute the decree was made by

the second defendant. The objection taken to the application was that the

petitioner was not entitled to proceed in execution as the decree in question had not been transferred to him by assignment in writing or by operation of law. The learned Subordinate Judge dismissed this objection as being frivolous and vexatious, and accordingly recognised the petitioner as the transferee-decree-holder and directed execution to proceed.

3. The only point urged in this appeal by the appellant is that the objection raised to the execution of the decree at the instance of the purchaser is a valid one because the decree had not been transferred to him by an assignment in writing or by operation of law. It appears to us that the words "operation of law" cannot apply to a case where a person has become the owner of a decree by some transaction inter vivos. It applies to cases where the decree has been transferred from one to another by way of succession or where there is a bankruptcy or any similar event which has the effect in law of bringing about such a transfer. In substance the question for our determination is whether there is a transfer of the decree in question in this case by assignment in writing. As already observed there can be no doubt that it is open to a Court in a partnership suit for the purpose of protecting or realising the partnership assets to sell any of the assets of the partnership in any reasonable manner. What was done in the present case was to sell one of the assets of the partnership to one of the partners. There can be no doubt that the intention of such sale was to enable the purchaser to realise the amount due under the decree and as the decree could be realised only by execution the intention must have been to make a transfer of the decree for the purpose of enabling the purchaser to apply in execution and realise the amount due. The intention is therefore very clear.

4. The writing that is required by Order 21, Rule 16 CPC is also present. It consists of several orders passed by the Court. The only question that remains is whether these orders amount to an assignment of the decree. Obviously the sale is not one held under the provisions relating to sale contained in Order 21 of the Code of the Civil Procedure. The ruling referred to by the lower Court does not apply and it does not afford any assistance in arriving at a correct decision on this point. It seems to us that what is required by law is not any particular form of writing but an assignment in substance which is in writing. Looking at the orders of the Courts

referred to above it is impossible to resist the conclusion that the intention of the Court was to assign the decree to the partners who was the successful bidder in order to enable him to execute the decree. The intention is clear and that intention was effected by the orders. It is no doubt true that the Court did not formally state that the sale was being made by the Court acting on behalf of all the parties to the suit. But the nature of the suit and the nature of the property that was to be sold as well as the circumstances which led the Court to make the sale clearly show that the sale must have been made on behalf of all the parties to the suit. The absence of a formal assignment in the sense of a document which in form purports to assign the decree by the Court acting on behalf of all the parties to the suit to the purchaser is not, in our opinion, required by law. No particular form of assignment is prescribed in the case of decrees either under Order 21, Rule 16 or by any other provision of law. Anything in writing which transfers a decree and clearly shows that the intention was to assign the decree is sufficient. The assignment in this case must be deemed to have been made by the Court acting on behalf of all the partners who were entitled to the decree and for whose benefit the decree was obtained by the receiver. It follows therefore that there is in this case a transfer of the decree in favour of the purchaser by an assignment in writing. If so it follows that the appeal must fail. It is therefore unnecessary to consider the other questions raised by the purchaser respondent's advocate, namely, that the question of res judicala arises and that in any case the purchaser is entitled to execute the decree as one of several joint decree-holders.

5. The appeal is dismissed with costs of the 4th respondent, the only contesting respondent.