

(1924) 04 MAD CK 0036
In the Madras High Court

Pitchakkuttiya Pillai and Others

APPELLANT

Vs

Doraiswami Mooppanar and Others

RESPONDENT

Date of Decision : 22-04-1924

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 32 Rule 6

Citation : AIR 1925 Mad 230 : (1924) 47 MLJ 498

Hon'ble Judges : Wallace, J

Bench : Division Bench

Judgement

Wallace, J.—This case arises out of an execution petition. The appellants, who were the plaintiffs, obtained a money decree against the

respondents in 1919. The 1st plaintiff for himself and as guardian of his minor brothers, plaintiffs 2 and 3, put in an execution petition on 1st

September, 1919, to recover the money. The 1st defendant was arrested and brought to Court under a warrant. On the warrant the appellant's

vakil endorsed on 4th September, 1919, "" Judgment-debtor may be released. Decree fully satisfied."" The executing Court however then refused to

record satisfaction on the ground that two of the applicants in the execution petition were minors. Neither party took any further steps to have the

satisfaction of the decree recorded. On 22nd January, 1920 the 1st plaintiff for himself and as guardian of minor plaintiffs 2 and 3 again applied for

execution. The judgment-debtor pleaded that the decree had already been fully satisfied. The executing Court originally proceeded on the question

of law only and held that the payment endorsed on the warrant, even if true, was not a payment in law since under Order 32, Rule 6, Civil

Procedure Code, the 1st plaintiff was not entitled to receive any money towards the decree on behalf of minors unless and until he had obtained

leave of the Court. On appeal the appellate Court called for a finding whether the judgment-debtors had actually paid up as certified on the

warrant by the plaintiffs" vakil, and, if that payment had been made to the 1st plaintiff, whether he received it as manager of the joint family or not.

On this the original Court found that the payment had been made to the 1st plaintiff in his capacity as manager, and these findings were accepted

by the Lower Court. The Subordinate Judge then considered whether the 1st plaintiff could receive the money without leave of the Court under

Order 32, Rule 6, Civil Procedure Code, and he held that, as managing member he could, and he therefore dismissed the execution petition on the

ground that the decree was already fully satisfied. The plaintiffs now appeal.

2. It appears to me that the remand of the case by the lower Appellate Court for a decision whether or not the payment was actually made, Avas

unnecessary. There is a certificate on the warrant by the plaintiffs" authorised pleader that the decree was fully satisfied. Therefore the payment

was certified. It is true that the lower Court refused to record it. but Order 21, Rule 2, Civil Procedure Code, does not say that in order that a

payment shall be recognized by the Court executing the decree that payment shall be both certified and recorded. The words used are "" certified or

recorded."" There was nothing therefore to prevent the executing Court from at once recognizing the payment and the decree as fully satisfied,

unless Order 32, Rule 6, barred the way, while of course the Court was not bound to recognise the payment if that rule stood in the way. What the

executing Court had before it was a certificate by a pleader appearing for all the three plaintiffs that the decree was fully satisfied. The execution

petition and the order would also bring to its notice that two of the execution petitioners were minors, represented by the 1st plaintiff as guardian

and next friend. In such a case I think the executing Court was bound to conclude prima facie that the payment in full satisfaction would have been

made to the 1st plaintiff for himself and on behalf of the minors, and there is nothing to rebut that presumption here. In fact, the concurrent finding

of fact on the evidence after remand is to the same effect.

3. In such circumstances, had the 1st plaintiff not been manager of the joint family of himself and plaintiffs 2 and 3, there can be no doubt that he

would have had to obtain leave of the Court before receiving the money on

behalf of the minors under Order 32, Rule 6, Civil Procedure Code.

The short question then is, does the fact that he was manager absolve him from the necessity of conforming to this rule ?

4. It cannot be doubted that if the execution petition had been put in by the 1st plaintiff alone as manager he would have been entitled to receive the

whole payment in his capacity as manager without leave of the Court, and plaintiffs 2 and 3 could not have challenged the payment. But where he

has chosen to join the minors with him and to bring them before the Court as minors and thus bring himself also before the Court in the capacity of

guardian-ad-litem, can it be pleaded by himself as well as by the minors that the payment to him with-out leave of the Court is a nullity ?

5. The plaintiffs rely chiefly on the Privy Council case in Ganesh Rao v. Tuljaram Rao ILR (1913) M 295 : 1913 25 MLJ 150. That was a case in

which a compromise of a partition suit had been made by the father and manager of a joint family. He was the 3rd defendant in the case, and he

appeared on the record also as the guardian of his minor son, the 6th defendant. He compromised the suit without the leave of the Court. This High

Court held interpreting Section 462 of the Code of 1882 that it was not necessary for the father to have obtained the leave of the Court before

compromising the suit. The Privy Council however reversed this laying down generally that where a manager of the joint family is himself on the

record as the next friend or guardian of a minor member, his powers are controlled by the provisions of the law and he cannot do any act in his

capacity of father or managing member which he is debarred from doing as next friend or guardian without leave of the Court. The lower appellate

Court has held that this ruling passed u/s 462 of the Code of 1882 should not, on the authority of Krishna Hande Vs. Padmanabha Hande and

Others, be applied to old Section 461, the present Order 32, Rule 6, when it is a question of money due under a decree, but I do not think that it

has rightly understood that case. It does not appear that in that case there was any minor on the record and therefore the managing member was

not before the Court in the capacity or a next friend or guardian. The Privy Council ruling has been applied to the provisions of Order 32, Rule 6,

by a single Judge of this Court in Krishna Aiyar v. Chakrapani 29 INDCAS 475.

6. After full consideration I am of opinion, although with considerable reluctance,

that the Privy Council case concludes the matter and that the payment, although made and certified, cannot be recognised by the Court executing the decree, since the leave of the Court was not obtained under Order 32, Rule 6. I have come to this conclusion with reluctance because the 1st plaintiff at least thus secures at present a double payment of the decree amount by means of his own laches. No doubt, the judgment-debtors were careless in not seeing that the satisfaction was recorded and in not insisting on the leave of the Court being obtained, but the 1st plaintiff is the real party in default and now profits by his own default.

7. A further point has however been argued whether the payment by the 1st defendant to the 1st plaintiff will effect a discharge of the decree debt so far as the 1st plaintiff is concerned. The District Munsif has held that it will not. The lower appellate Court in the view it took naturally did not deal separately with that point. The law on the subject is, I think, clear that the payment to one of several joint decree-holders will not be satisfaction of the decree even in part unless (1) the payee is an agent of the others entitled in law to receive the whole amount on their behalf, or (2) the distinct shares of each joint decree-holder were determined and known. Vide *Mahomed Silar Sahib and Co. by Mahomed Silar Sahib Vs. Nabi Khan Sahib and Others*, . In *Thimma Reddi v. Subba Reddiar* (1918) MWN 507. this ruling was extended to certificates of satisfaction given by one of several and joint decree-holders, unless as a matter of fact the payment certified had been made to all the joint decree-holders.

Both these cases rest on the judgment of Bashyam Iyengar, J., in *Periasami v. Krishnayyan* ILR (1903) M 431 : 12 MLJ 166. As against this, the appellant cited *Jamna Bai v. Vasanta Rao* ILR (1916) M 409 : 1916 31 MLJ 18. a Privy Council case, in which it was held that, where a joint bond was executed by two persons, one being a minor by his guardian and the bond so far as the minor was concerned was void because no leave of the Court was obtained, the other party to the bond could not plead that voidability as rendering nugatory his obligation under the bond.

The Privy Council held that in any case the major promisor under the bond was liable and could not plead the minority and consequent immunity of the other promisor as a bar to his liability. I do not think that this case really assists the decision of the present case, where the question is not of the

liability of the decree-holders to the judgment-debtor but of the liability of the judgment-debtor to the joint decree-holders. In Sultan Moideen

Rowthan Vs. Savalayammal and Another, it was held that where payment has been made to one of two joint decree-holders that payment was

valid to the extent of the share to which the payee was entitled, and therefore an enquiry was ordered as to the extent of that share. This ruling-is

certainly not in conformity with the later cases quoted above. I consider that I must follow the later cases and hold that the payment is not valid

against even the 1st plaintiff. The decree had to be executed as a joint decree or not at all. Valid discharge of any portion of the debt could only be

given by one who could give it for all joint decree-holders, and the 1st plaintiff could not do that because the discharge so far as the minor plaintiffs

were concerned was not valid in law at all. Hence I must hold that the decree has not been at all satisfied. I therefore hold that the decision of the

District Munsif was correct and this appeal must be allowed, but in the circumstances appellants are refused costs here and in the lower appellate

Court.