

(1925) 01 MAD CK 0047
In the Madras High Court

Ponnappa Reddi and Others

APPELLANT

Vs

Thiruvengada Pillai and Co. and Others

RESPONDENT

Date of Decision : 26-01-1925

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 8
Madras Small Cause Court Act — Section 38

Citation : AIR 1925 Mad 1179 : 90 Ind. Cas. 509 : (1925) 22 LW 455

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

Bench : Division Bench

Judgement

1. The Madras Court of Small Causes passed a decree in plaintiffs' favour for Rs. 1,386-10-9 and costs and Vakil's fee Rs. 60 against the assets of the deceased Angusamy, if any, in the hands of the defendants. This decree was transferred to the District Munsif's Court at Tiruvallur. The plaintiffs attached some property as the assets of Angusamy in the hands of the defendants. The defendants Nos. 1 to 8 applied to the District Munsif of Tiruvallur for releasing the property from attachment on the ground that the properties were the joint family properties of the defendants Nos. 1 to 8 and Angusamy and that they were entitled to them by right of survivorship after the death of Angusamy. The District Munsif allowed the petition, and on appeal by the decree-holders, the District Judge set aside the order of the District Munsif and upheld the attachment so far as the share of Angusamy was concerned. Against this order the present appeal is filed by defendants Nos. 1 to 9. The first contention on behalf of the appellants is that no appeal lay to the District Court against the order of the District Munsif. The argument is that the District Munsif's Court is governed by the rules framed by the High Court under the Presidency Small Cause Courts Act XV of 1882, and under the rules no appeal is provided for against an order in execution. The decree of the Madras Small Cause Court was transferred to the Tiruvallur Court to be executed not in its Small Cause side but on its regular side. Under the rules the Madras Small Cause Court has no power to execute its decrees against Immovable properties. u/s 31 of the Act, the Madras Small Cause Court may on

the application of the decree-holder send the decree for execution

(a) in the case of the execution against Immovable property situate within such local limit to the Madras City Civil Court or the High Court of Judicature at Port William or Bombay as the case may be;

(6) in all other cases to any Civil Court within the local limits of whose jurisdiction such judgment-debtor, or any moveable or Immovable property of such judgment-debtor may be found.

2. The procedure prescribed by the C.P.C. for the execution of decrees by Courts other than those which made them shall be the procedure followed in such cases. Section 8 of the C.P.C. makes only certain sections of the C.P.C. applicable to the Courts of Small-Causes established in the Towns of Calcutta, Madras and Bombay. No doubt Sections 38, 39, 40 and 41 are not among the sections applicable to the proceedings in the Madras Small Cause Court, but the question is not what is the procedure governing the execution in the Madras Small Cause Court, but what is the procedure governing executions in the District Munsif's Court to which the decree of the Small Cause Court is transferred for execution. It is conceded that the District Munsif's Court in executing a decree of the Madras Small Cause Court exercises its powers not as a Small Cause Court, but as a Court of original jurisdiction, for, in execution of the decree Immovable property could be attached. If Immovable property is attached the provisions which relate to claim petitions and other provisions of Order XXII of the C.P.C. would apply to attachment and sale of Immovable property. The contention for the appellants is that the small cause decree which has been transferred to the Tiruvallur Court retains its character of a small cause decree and the rules governing its execution in the Madras Small Cause Court are applicable to the proceedings in the Tiruvallur Munsif's Court. Some provisions of the C.P.C. are made applicable to the Madras Small Cause Court by the notification of 17th May 1916 and Section 42 of the Code in its amended form is one of them and it is in these terms: "The Court executing a decree sent to it shall have the same powers in executing such a decree as if it had been passed by itself.... And its order in executing such decree shall be subject to the same rules in respect of application u/s 38 of Act XV of 1882 as if the decree has been passed by itself." It does not either expressly or impliedly, apply to the proceedings in the Court to which a decree of the Madras Small Cause Court has been transferred. The amended section is only applicable to the Madras Court of Small Causes. There is no substance in the contention that the High Court intended that this section should apply to the District Munsif's Court or to any other Court in the moffussil to which the decree of the Madras Small Cause Court is sent for execution. The latter portion of this rule makes it abundantly clear that it could not have been the intention of the High Court, to make it applicable to any Court other than the Madras Court of Small Causes. The latter portion of the rule makes Section 38 of the Madras Small Cause Court Act apply to execution proceedings. u/s 38 a defeated party may apply for a new trial or may apply to alter or set aside an

order passed by the Court. Applications for a fresh trial are made before the Full Bench consisting of two or more Judges which either confirms or alters the order or decree passed by a single Judge. To say that Section 38 is applicable to execution proceedings in the Munsif's Court is to make the proceedings there a farce, for, a party against whom the District Munsif passes an order could apply for a new trial within 8 days. Is the same Judge to be asked to try a matter which he has heard and disposed of or is he to be asked to alter or set aside or reverse any order passed by him if the party against whom the order is made chooses to apply within 8 days for the reversal of that order? It cannot, therefore, be reasonably contended that Section 42 is applicable to proceedings in execution of a decree of the Madras Small Cause Court transferred to a Court in moffussil. Apart from that it is difficult to contend how the High Court by framing certain rules under the Presidency Small Cause Courts Act can abrogate or nullify the C.P.C., and the rules thereunder which govern the proceedings in the Courts in the moffussil. Section 42 only applies to execution proceedings in the Madras Small Cause Court, whether the decree sought to be executed was passed by the Madras Small Cause Court or transferred to that Court from a Court in the moffussil.

3. It is next contended that the right of appeal can only be given by a Statute, and the rules of procedure cannot give a right of appeal when it is not given by a Statute. It is well settled that when a small cause decree of the Sub-Court or of a District Munsif's Court is transferred to the original side of the Sub-Court or of the Munsifs Court for execution against the Immovable property of the judgment-debtor there is a right of appeal u/s 47 of the C.P.C. and the rules applicable to the proceedings in execution of the original decree are applicable to the execution proceedings of the small cause decree transferred to the original side of a Court. The decree of the Madras Small Cause Court having been transferred to the original jurisdiction of the District Munsif's Court, it is difficult to see how it can be said that the C.P.C. is not applicable to such proceedings. If the C.P.C. is applicable the right given under the Code is also available to the parties to the execution proceedings. The moment the C.P.C. is made applicable to the proceedings in a Court, unless some portions of it are exempted by a special rule or enactment from being applicable to the proceedings of such Court the whole Code is applicable and a party has the right of appeal which that Code gives. There is, therefore, no substance in the contention that the appeal by the decree-holders was incompetent. The District Judge had jurisdiction to hear an appeal from the decision of the District Munsif and his order is not without jurisdiction.

4. The next contention is that the learned District Judge was wrong in holding that the judgment-debtors were estopped from setting up the plea that they and Angusamy were members of a joint Hindu family. When the case came on for trial in the Madras Court of Small Causes, the defendant distinctly raised the following pleas amongst others:

(1) Deceased Angusamy and defendants Nos. 1 to 8 are not members of an

undivided family

(2) Angusamy did not carry on any business for the benefit of defendants Nos. 1 to 8;

(3) defendants Nos. 1 to 8 have no concern in the plaint transaction and are not liable.

5. The learned Judge who heard the case gave a decree against the assets of Angusamy in the hands of the defendants. They distinctly put forward the contention that Angusamy was divided from them, and on that plea the Small Cause Court gave a decree against his assets in their hands. In the face of that plea and the judgment it is not open to the defendants now to contend that they and Angusamy were undivided in interest and that they succeeded to his property by survivorship. The District Judge was right in holding that it was not open to the defendants to raise the contention they did.

6. In the result the C.M.S.A. is dismissed with costs.

7. The connected C.M.P. is also dismissed.