

(1943) 12 MAD CK 0012
In the Madras High Court

R. Manicka Chettiar

APPELLANT

Vs

Official Assignee

RESPONDENT

Date of Decision : 13-12-1943

Acts Referred:

Citation : AIR 1944 Mad 333 : (1944) 57 LW 128

Hon'ble Judges : Kuppuswami Ayyar, J;Kuppuswami Aiyar, J

Bench : Division Bench

Judgement

Kuppuswami Ayyar, J.—The appellant is the plaintiff in O.S. No. 1794 of 1942 on the file of the City Civil Court, Madras. He filed his suit for recovery of money due under a hypothecation deed. Pending the suit he applied for attachment before judgment of the judgment-debtor's moveable properties. They were attached. The preliminary decree was passed but no final decree has yet been passed. Subsequent to the attachment, the defendants were adjudged insolvents and the Official Assignee in whom the properties of the defendants had vested filed a petition purporting to be under Order 22, Rule 10, Civil P. C, for impleading him as a supplemental defendant and also for raising the attachment. When the petition came on for hearing, objection was taken to the Official Assignee clubbing two prayers in one petition. He accordingly did not press the prayer for being impleaded as a party, but prayed for cancellation of the attachment and delivery of the attached properties to him on the ground that he was entitled to the attached properties by virtue of the order of adjudication. The appellant opposed the application. His contention was that by reason of the attachment, the properties must be considered to have been earmarked for his debt and that therefore the properties ought not to be handed over to the Official Assignee. The learned City Civil Judge disallowed the claim of the appellant, cancelled the attachment and directed the properties to be handed over to the Official Assignee. Hence this appeal.

2. There are no disputes about the facts. The properties in question were attached before judgment and no decree has been passed which could be

enforced as against the properties attached. The Official Assignee has obtained a vesting order in respect of the properties of the defendants. It has been pointed out by this Court in several rulings that an attachment does not confer upon the creditor any rights in the property and that it only amounts to a direction to the debtor not to alienate the property attached. The question was considered in *Sadayappa v. Punnainma* (1985) 8 Mad. 554. There the attachment was followed by a sale and it was held that since the property had been sold, the Official Assignee could not ask for payment of the money to him. In *Krishnaswami Mudaliar v. Official Assignee, Madras* (1903) 26 Mad. 673 it was held that an attachment before judgment would not operate when the rights under it were not exercised before the presentation of a petition in insolvency, so as to create in favour of the judgment-creditor a title which would prevail against that of the Official Assignee under the vesting order in insolvency made after the order of attachment. It was held that the Official Assignee was entitled to claim the property attached on the ground that the attachment was of no effect as against him. In *Italia v. Official Assignee, Madras* AIR 1941 Mad. 183 it was pointed out that no charge was created by an attachment and that when the judgment-debtor becomes an insolvent, the attachment falls to the ground, provided, of course, that the attachment has not resulted in a sale. In this case there is not even a decree which can be enforced by taking out execution against the attached properties. The result of adjudication is that the attachment got cancelled and the property vested in the Official Assignee.

3. It is urged for the appellant that in this particular case, there is evidence that the defendants in the suit after notice was served on them of the attachment before judgment appeared and consented to the attachment. But this will not give the creditor any further rights than what he would have if the defendants had not appeared and an order had been passed in their absence. The mere fact that there was a consent order would not clothe the creditor with better rights than what an attaching creditor would ordinarily have.

4. It is next urged that the only Court by which a decision on this point can be given is the Insolvency Court and not the Court in whose custody the articles were. Though the order appealed against was passed on a petition filed under Order 22, Rule 10, it was not an order passed under that section. Order 22, Rule 10, Civil P. C, deals with the question as to against whom and by whom proceedings can be continued as representatives by reason of an assignment or devolution. In this case the Official Assignee did not want to be impleaded as a party. He merely wanted possession of the attached properties. His claim was allowed and that claim had necessarily to be made in the Court in whose custody the articles were. The petition was therefore cognizable by the City Civil Court and the point had necessarily to be gone into for the purpose of considering the claim. It is true that if the appellant were to ask the property to be treated as ear-marked for his debt, he may have to move the Insolvency Court to direct the Official Assignee to pay him the sale proceeds of these properties. But that was not a matter with which the City Civil Court was concerned. The only question

which that Court was concerned with was whether the attachment subsisted so far as the Official Assignee was concerned or not. The appeal fails and is dismissed with costs.