
(1920) 04 MAD CK 0001
In the Madras High Court

Rajah of Venkatagiri

APPELLANT

Vs

Sura Krishna Reddi and Another

RESPONDENT

Date of Decision : 29-04-1920

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 43

Citation : (1920) 39 MLJ 472

Judgement

1. Certain cattle were attached in execution of a decree in favour of the appellant and the amin in accordance with, the Civil Rules of Practice

under the rule of the High Court and Order 21, Rule 43 made over the cattle to a villager for safe custody and production in Court for which he

executed a bond with two sureties. The appellant applied in execution to enforce the bond against the respondent sureties on their failure to have

the cattle, produced in accordance with the bond. The question is whether the bond could be enforced in this way u/s 145.

2. It is argued that Clause (b) of Section 145 applies. It says : "" Where any person has become liable as surety for the restitution of any property

taken in execution of a decree,"" then the decree may be executed against him to the same extent to which he has rendered himself personally liable

in the manner provided in the Code for the execution proceedings."" This clause is prima facie intended for cases in which restitution is sought

against the person who has taken the property in execution of the decree and restitution is to be made by such" a person. Here it would be

stretching the language of the Code too far to say that the sureties took the property in execution of the decree. We agree therefore with the

interpretation put on this clause by Mr. Justice Sadasiva Aiyar in Kommareddi Subareddi v. Kollipara Veerayya Tata 9 L. W. 476.

3. It is also argued that Clause (c) applies. That says : that the surety bond can be executed against the person who has made himself liable for the payment of any money, or for the fulfilment of any condition imposed on any person, under an order of the Court in any suit or in any proceeding consequent thereon. Here there was no order of the Court under which any money was to be paid by any person or which required him to fulfil any condition imposed on him. Order 21, Rule 43 empowers the amin of the Court entrusted with the warrant of attachment to make over cattle or moveable property of a like nature to the custody of a villager on his executing a bond. The act, therefore, is that of the amin done under the authority conferred on him by law. The Court could not be said to have passed any order in this case under which the bond was taken. The Court had not the terms of the bond before it, the Court knew nothing about it, until the amin's return was made. We must therefore hold that Clause (c) also does not apply. The only remedy open to the appellant (decree-holder) is to get the bond assigned by the Judge himself and to sue upon it as pointed out in the case abovementioned. The petition is dismissed. No costs.