
(1925) 11 MAD CK 0050
In the Madras High Court

Raman Chettiar

APPELLANT

Vs

Chokkalinga Chettiar

RESPONDENT

Date of Decision : 25-11-1925

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : AIR 1926 Mad 691 : (1926) 24 LW 70

Judgement

1. The appellant is the assignee of the 5th plaintiff decree-holder an O.S. No. 15 of 1905 on the file of the Subordinate Judge's Court, Negapatam. The respondent is the decree-holder in O.S. No. 64 of 1916 on the file of the same Court. In that suit he obtained a decree against the appellant's assignor under which he (the respondent) was entitled to get from him Rs. 3,000 in four months' time with interest at eight annas per cent, per mensem from this date and in default Rs. 4,000 with interest at 1 per cent. per mensem from this date and the decree debts in O.S. No. 15 of 1905 were also made liable for this claim giving the respondent a charge over them. The appellant executed the decree in O.S. No. 15 of 1905 and the money was deposited in Court. When the respondent applied for the payment of his decree amount from this sum in E.A. No. 1215 of 1919, he was ordered to be impleaded as a supplemental respondent in E.P. No. 207 of 1919 (namely, the appellant's application for execution in O.S. No. 15 of 1905 and he was accordingly made a respondent. The application out of which the present appeal arises was filed by him as a fresh application for the same relief. The Subordinate Judge ordered that a cheque should be issued in his favour for the amount claimed.

2. In appeal it is argued that the lower Court ought to have held that the condition in the compromise decree that the sum of Rs. 4,000 should be paid instead of Rs. 3,000 which was the sum payable, with interest at one per cent. Per mensem, amounts to a penalty and that, in any event, the lower Court ought to have held that the respondent is not entitled to more than Rs. 3,000 with interest at 6 per cent.

3. Mr. Desikan for the respondent takes a preliminary objection that no appeal lies in this case u/s 47, Civil P.C. inasmuch as the dispute is between the parties who occupy the position of rival decree-holders in O.S. No. 15 of 1905. In our opinion the objection is well founded. The sum deposited in Court is admittedly the amount realized in execution of the decree in O.S. No. 15 of 1905. The decree was executed by the appellant who as an assignee is in the position of the decree-holder himself. By virtue of the charge over the decree in O.S. No. 15 of 1905 the respondent substantially occupies the position of a decree-holder in O.S. No. 15 of 1905 and he now intervenes in E.P. No. 207 of 1919, namely the appellant's execution proceedings for the payment to him of a portion of the decree amount. His right to so interfere is not challenged by the appellant. The parties are now disputing over the distribution of the amount realized in execution of the decree in O.S. 15 of 1905 and in this dispute, the judgment-debtor in that decree has no place at all. Though the proceedings relate to the execution of a decree, since the dispute, in the case is one between persons who occupy substantially the position of decree-holders and the judgment-debtor in the suit has nothing to do with this dispute, the order passed by the Subordinate Judge relating to such dispute is not appealable u/s 47 Civil P.C. In this view no appeal lies in this case and the appeal should be dismissed.

4. We heard the learned vakil for the appellant on the merits also. Assuming that the provision in the decree in O.S. No. 64 of 1916, on which the respondent relies for the relief claimed by him, amounts to a penalty, we see no reason why on equitable grounds the appellant should be given any relief. He is an assignee from the 5th plaintiff-decree-holder in O.S. No. 15 of 1905. When he purchased the decree by assignment he did so with open eyes with full knowledge of the existence of the so-called penal provision in the decree in O.S. No. 64 of 1916. He cannot now be heard to grumble against it.

5. We dismiss the appeal with costs.