

(1932) 09 MAD CK 0039
In the Madras High Court

Rami Reddi Chinna Vobula Reddi	APPELLANT
Vs	
Kethepalli Gurumurthi and Another	RESPONDENT

Date of Decision : 01-09-1932

Acts Referred:

Citation : AIR 1933 Mad 219 : (1933) 37 LW 127

Hon'ble Judges : Madhavan Nair, J

Bench : Division Bench

Judgement

Madhavan Nair, J.—This civil miscellaneous second appeal arises in connexion with the execution of a decree against a surety. The surety is the appellant. The question in this second appeal is whether the execution application is barred by limitation. The first Court held that it was barred and in appeal this decision was set aside. The facts briefly are as follows:

2. In the course of a suit prior to its termination an order for attachment before judgment of the judgment-debtor's properties was made by the Court. His moveables were attached by the Amin and were by him entrusted to the custody of the appellant who executed a surety bond. After stating that the bond is executed by the surety, the document ends as follows:

...The said Amin put me in possession of the said items of property of the value of rupees two hundred and fourteen. I shall therefore produce the said items of property whenever called upon by the Court. If I fail to so produce, I and my heirs shall be bound by such orders as may be passed by the Court. To this effect is the security bond written and given.

3. Then occurs the signature of the surety. The bond is dated 7th November 1921. The decree in the suit was passed on 7th September 1922. An application was put in by the transferee decree-holder respondent to recognize the transfer of the decree in his favour. On 7th November 1925 the present application to execute the decree against the surety was filed. The date of the decree being 7th September 1922 it is clear that if Article 182, Lim. Act, applies, the application is

barred by limitation. The first Court held that it was so barred. In appeal the learned Judge held that the cause of action against the surety arose only on 5th December 1925 when in response to the application for execution he appeared before the Court and demurred to produce the property by setting up the plea of limitation. The learned Judge says that the cause of action on the bond as against the surety did not arise until 5th December 1925 and therefore the application is not barred by limitation. According to him the question of limitation is governed by Article 65, Lim. Act, but no authority has been cited in support of that position. The learned Judge's reasoning may be stated in his own words:

The bond executed by respondent 2 was a conditional one and the cause of action for enforcing the terms thereof would arise only on the breach of its condition, viz., when the respondent fails or refuses to produce the property when called upon by the Court to do so. To an action on such a bond, Article 65, Lim. Act, would be applicable.

4. It seems to me that the reasoning of the learned Judge cannot be accepted. The question is not when the cause of action would arise against the surety. In my view the conditional liability to be proceeded against came into existence on the date of the security bond itself. The real question is when that conditional liability may be enforced by the decree-holder. He may enforce it under Article 182, Lim. Act, within three years from the date of the decree or within such other time as is allowed by the various provisions of that article. Now clearly the present application is beyond three years from the date of the decree and no other starting point than the date mentioned by the learned Judge, viz., 5th December 1925, has been relied on before me. In my opinion the case is governed by the decision of this Court in Venkata Ranga Row v. Venkata Rama Narasimha Rao AIR 1915 Mad 423, (C.M.S.A. No. 62 of 1913 on the file of the High Court). In that case also there was an attachment before judgment and a surety bond was executed under Order 21, Rule 43 as in the present case. There was no question as to the applicability of Article 182, Lim. Act, in that case. The application in that case being admittedly beyond three years it was assumed that it was barred. The arguments addressed related to the question whether the applications previous to the application in question could be relied upon to claim an extension of the period of limitation. The learned Counsel appearing for the respondent seeks to distinguish this case by saying that the terms of the security bond in Venkata Ranga Row v. Venkata Rama Narasimha Row AIR 1915 Mad 423 are different from those of the security bond in the present case. It is true that in Venkata Ranga Row v. Venkata Rama Narasimha Row AIR 1915 Mad 423 the surety explicitly makes himself responsible for the discharge of the decree. In the present case there is no such explicit statement that he makes himself liable for the decree, but the words used are:

I and my heirs shall be bound by such orders as may be passed by the Court.

5. I cannot see any distinction between this statement appearing in the present security bond and the statement in the security bond in Venkata Ranga Row v.

Venkata Rama Narasimha Row AIR 1915 Mad 423. "Any orders that might be passed by the Court" would certainly include the decree which may eventually be passed in the course of the suit. Then it is argued that the provisions of Section 145 will not relate to security bonds executed under O.21, Rule 43. No authority in support of this position has been quoted. On the other hand invariably resort is had to Section 145, Civil P.C., for enforcing the liability of the surety. The learned Judge also holds that the proper procedure for the decree-holder is to get an assignment of the bond and institute a suit instead of proceeding in execution. According to the recent decision of this Court in Sankunni Variar v. Vamdevan Nambudripad 1926 Mad. 1005 this position is no longer tenable. For the above reasons I set aside the order of the lower appellate Court and restore that of the District Munsif with costs here and in the Court below. The memorandum of objections is dismissed. I make no order as to costs.