
(1893) 02 MAD CK 0006
In the Madras High Court

Rangaswami Chetti

APPELLANT

Vs

Periasami Mudali by his guardian Chidambara Mudali

RESPONDENT

Date of Decision : 01-02-1893

Acts Referred:

Citation : (1894) ILR (Mad) 58 : (1893) 3 MLJ 211

Judgement

1. We think the order appealed against is right. Both courts considered that the attachment in execution of the decree in Original Suit No. 75 of

1885 of the decree in Original Suit No. 252 of 1881, was subsisting at the date of the purchase by defendant at the court sale on 5th July 1888. It

is contended that an order was made on 19th March 1887 to the effect that the application for execution of the decree in Original Suit No. 75 of

1885 was dismissed on the ground that no further steps had been taken and that this order put an end to the attachment; whether the attachment

ceased at the date of this order or continued to subsist is a matter to be decided with reference to the circumstances of each case as observed by

the Privy Council in the case of Puddomonee Dossee v. Roy Muthooranath Chowdhry, 12 B. L. R 411; 20 W. R 133

2. We observe that up to 16th March 1887 some steps had been taken and the application was dismissed on 19th March and it does not appear

that any previous notice was given to the execution creditor before the order of 19th March was made. Moreover, defendant was a boni fide

purchaser at a court sale of the lands in question and any irregularity in the proceedings which led to the sale cannot be relied on as a ground for

setting aside the sale after it had been confirmed and a certificate issued. See Rewa Mahton v. Ram Kishen Singh, I.L.R 14 C 18 and Mothura

Mohun Ghose Mondul v. Akhoy Kumar Mitter, I. L. R 15 C 557

3. Another contention for appellant is that u/s 273 of the CPC the decree-holder in Original Suit No. 75 of 1885 was not competent to execute the

decree in Original Suit No. 252 of 1881 attached by him. Section 273 expressly authorizes the court in such a case to apply the proceeds of the

decree attached in satisfaction of the decree sought to be executed. This direction clearly implies that the attaching decree-holder is entitled to take

all steps necessary for the realization of the proceeds of the attached decree by the court. The same view is taken by the Calcutta High Court in

Peary Mohun Chowdhry v. Romesh Chunder Nundy, I. L. R 15 C, 371 In the view of the case which we take, it is not necessary to consider

whether Article 10 or 11 of the second Schedule to the Limitation Act governs the case.

4. This second appeal fails and is dismissed with costs.