

(1978) 04 MAD CK 0026

In the Madras High Court

Case No : Civil Revision Petition No. 470 of 1978

Ravindra Finance

APPELLANT

Vs

Yaanai Tobacco Co. and Others

RESPONDENT

Date of Decision : 27-04-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 37, Order 21 Rule 50, Order 21 Rule 50(1), Order 21 Rule 50(2), Order 30 Rule 6

Citation : AIR 1979 Mad 25 : (1978) 91 LW 409 : (1977) 90 LW 409

Hon'ble Judges : Ismail, J

Bench : Single Bench

Judgement

Ismail, J.—This is a petition to revise the order of the learned third Additional subordinate Judge, Tiruchirapalli, dated 26-7-1977 in E.P.

No. 3 of 1977 in O. S. No. 394 of 1975 on his file. Admittedly, the petitioner who was the plaintiff and decree holder, obtained a decree only

against the firm. Subsequently, he filed an execution petition purporting to be under Order 21, Rules 37 and 50 of the C. P. Code, for executing

the decree against the respondents 2 and 3, who, according to the petitioner, were the partners of the firm. The court below dismissed the petition

holding that when the respondents 2 and 3 had not been impleaded as parties to the suit or no summons had been served on them, the executing

court cannot execute the decree against them. It is to revise this order the present civil revision petition has been filed.

2. I am of the opinion that the order of the learned Subordinate Judge is correct. Order 21, Rule 50 in sub-rule (1) thereof, states as follows-

1. Where a decree has been passed against a firm, execution may be granted-

(a) against any property of the partnership;

(b) against any person who has appeared in his name under rule 6 or Rule 7 of O. XXX or who has been admitted on the pleadings that he is, or

who has been adjudged to be, a partner;

(c) against any person who has been individually served as a partner with a summons and has failed to appear.

In sub-rule (2) of R. 50, O. 21, C. P. C. It is stated-

(2) Where the decree holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to

in sub-rule (1), clauses (b) and (c), as being a partner in the firm, he may apply to the court which passed the decree for leave, and where the

liability is not disputed, such court may grant such leave, or, where such liability is disputed, may order that the liability of such person be tried and

determined in any manner in which my issue in a suit may be tried and determined.

3. Thus, there is the clear difference between the partners being personally parties to the decree and they being not parties to the decree. In fact,

clauses (b) and (c) of sub-rule (1) of Rule 50, Order 21, C. P. C. will clearly show that the partners should have appeared in their own name

under R. 6 or Rule 7 of Order XXX C. P. C., or should have been admitted on the pleadings that they are, or have been adjudged to be, partners,

or summons in the suit should have been individually served on them and they must have failed to appear. Only in such cases, the decrees can be

executed against the partners. In all other cases, sub-r. (2) of Rule 50, Order 21, C.P. C. applies, which enables the court which passed the

decree to grant leave. In this particular case, the respondents 2 and 3 have not appeared in their own name under Rule 6 or Rule 7 of Order XXX

C. P. C. They have not been admitted on the pleadings that they were, or were adjudged to be, partners and no summons in the suit had been

served on them individually. In those circumstances, neither Clause (b) nor clause (c) of sub-rule (1) of Rule 50 Order 21, C. P. C. will apply and

therefore, the learned Judge was right in dismissing the application filed by the petitioner herein.

4. Consequently, the civil revision petition is dismissed.

5. Revision dismissed.