
(1929) 08 MAD CK 0039
In the Madras High Court

R.D.K. Venkatalingama Nayanim Bahadur Varu APPELLANT
Vs
Raja Dhanaraj Girji RESPONDENT

Date of Decision : 13-08-1929

Acts Referred:

Citation : AIR 1929 Mad 826

Hon'ble Judges : Cornish, J

Bench : Division Bench

Judgement

Cornish, J.—The appeal in this case relates to the execution of a decree obtained on 3rd March 1911 by the plaintiff against the Raja of

Kalahasti. After some unsuccessful attempts to execute the decree in the Nellore District Court the decree was transferred for execution to the

Chittoor Court. There was apparently-considerable difficulty in discovering what properties were attachable in execution of the decree, for it was

not until January 1923 that a schedule of properties was filed. This schedule adopted the particulars of property, consisting of seven lots of items

given by the defendant, the legal representatives of the original defendant, in a memorandum (Ex. A) filed by him in support of a counter petition, in

which he alleged that the seven items were the personal pro-party of the judgment-debtor and that these properties were alone liable for the

decree debt. Notice of this petition was ordered to go to the defendant. A counter petition was filed on his behalf in which, notwithstanding the

memorandum Ex. A, objection was raised that the properties comprised in the memorandum were not liable to attachment and stating that he

would file his objections in detail if attachment was ordered. This he did not do But no sooner was the property ordered to be attached than three

claimants arose and succeeded in getting items 3, 4 and 6 released; and it appears that item 5 being subject to a similar challenge was not attached.

The execution-creditor finding that the remaining items were not sufficient to satisfy his decree debt, which amounted to Rs. 17,000 odd,

proceeded to try and discover other properties, and on 21st March 1924 he filed a petition for the attachment of 26 villages to be included in the

schedule of properties already filed by him. This was M. P. No. 29 of 1924.; Notice of this petition (Ex. 3) was served on the defendant on 21st

May 1924, and a copy of the same was duly signed by him in acknowledgment of such service* The hearing of the petition was fixed for 8th July

1924 and the defendant not having appeared, an order was made ex parte for the attachment of the properties other than five items which were

excepted. Then, on 29th July 1926 the defendant filed petition M. P. No. 119 of 1926 for a review of the ex parte order passed in July 1924. The

Subordinate Judge, refused a review.

2. It has been contended on behalf of the defendant in this appeal that the petition M. P. No. 29 of 1924 was in effect a fresh application and

could not have been entertained in accordance with Section 48 (1) Civil, P.C. the application being after the expiration of twelve years from the

date of the decree sought to be executed. This would have been a very relevant argument had it been urged on behalf of the defendant at the

hearing on the execution proceedings on 8th July 1924. But the defendant having allowed the order upon that petition to pass ex parte he is, in our

opinion, concluded by that order. The following passages from the judgment of their Lordships of the Judicial Committee in *Raja, of Ramnad v.*

Velusami Thevar AIR 1921 P.C. 23, appear to us to govern this case. In the Privy Council case application was made for review of an order

allowing the petitioner to execute the decree and to file a fresh application for attachment on the ground that the fresh application was barred by

limitation. The Subordinate Judge, had on review permitted the defendants to raise the plea of limitation. Upon this their Lordships observed:

The order of 13th December 1915, is a positive order that the present respondent should be allowed to execute the decree. To that order the plea

of limitation if pleaded, would, according to the respondents' case, have been a complete answer, and therefore it must be taken that a decision

was given against the respondents on the plea.

3. And their Lordships added:

It was not only competent for the present respondents to bring the plea forward on that occasion, but it was incumbent on them to do so if they proposed to rely on it.

4. And it was held that the plea not having then been raised it was not competent to the execution Court to admit the plea on subsequent

proceedings. This principle is further illustrated in *Chidambaram Chetti v. Kandaswami Goundan* AIR 1924 Mad. 1, and in *Rajitagiripathy v.*

Bhavani Sankaram AIR 1924 Mad. 673, and it is in our opinion sufficient to dispose of the defendant's application for a review in this case. We

accordingly dismiss his appeal with costs.