

(1948) 09 MAD CK 0017
In the Madras High Court

R.M.S.M.P. Subramanian Chettiar

APPELLANT

Vs

The Official Receiver of Ramnad

RESPONDENT

Date of Decision : 10-09-1948

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (1949) 1 MLJ 143

Hon'ble Judges : Satyanarayana Rao, J

Bench : Division Bench

Judgement

Satyanarayana Rao, J.—The view of the learned Subordinate Judge that the present application falls u/s 47 of the CPC is correct. The

petitioner purchased the property in Court sale on the 28th August, 1944, in execution of the decree in O.S. No. 77 of 1931, Subordinate Judge's

Court, Devakottai, and obtained delivery of possession of the property on the 13th December, 1945, and 22nd September, 1946. The property

was attached earlier in execution of a decree of the Rangoon High Court in C.R. No. 632 of 1929 in E.P. No. 73 of 1937. By reason of the

insolvency of the judgment-debtors the execution petition. E.P. No. 73 of 1937 was not pursued and the petition was closed. After the

adjudication was set aside, the decree-holder filed Application No. 46 of 1941 to continue the execution as prayed for in E.P. No. 73 of 1937. In

this application the Court in the first instance directed the decree-holder to file a draft sale proclamation and after it was filed directed attachment of

the properties. It is difficult to see why this order of attachment was made notwithstanding that the properties were already under attachment in

E.P. No. 73 of 1937. This petition of 1941, was, however, dismissed ultimately on 10th March, 1941, as batta was not paid for attachment of the

property. The direction of the Court that batta should be paid for attachment was an unnecessary direction and the non-compliance with such a

direction would not entail the penal consequences contemplated under Order 21, Rule 57, of the CPC assuming that the effect of dismissing E.P.

No. 46 of 1941, would terminate the attachment effected in E.P. No. 73 of 1937. The dismissal, therefore, of E.P. No. 46 of 1941 does not

terminate the attachment. Further, as held in A.M.K.M.K. Karuppan Chettiar and Another Vs. Rajangam represented by mother and guardian

Thayyu Ammal and Others, , the attachment will cease only if the application on which the attachment is effected is dismissed for default and not

when a subsequent application was dismissed for default. For these reasons, it must be held that the attachment effected in E.P. No. 73 of 1937

still subsists. As the petitioner purchased the properties which were already attached in pursuance of the Rangoon decree, he should be deemed to

be a representative of the judgment-debtor u/s 47, CPC as held by a Bench of this Court in Seetharama Chettiar v. Chidambaram Chettiar (1933)

63M.L.J. 941 : ILR 56 Mad. 447.

2. The decision of the lower Court is correct and this civil revision petition is therefore dismissed with costs.