

(1993) 02 MAD CK 0003
In the Madras High Court

S. Janakaradas, Prop. Vijayan Saw Mills and Wood Works	APPELLANT
Vs	
C.M. Raj Mohan	RESPONDENT

Date of Decision : 24-02-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 57, Order 38 Rule 11

Citation : (1993) 2 LW 326 : (1993) 2 MLJ 371

Hon'ble Judges : Raju, J

Bench : Single Bench

Judgement

Raju, J.—The above revision petition has been filed Against the order of the Sub Court, Padmanabhapuram in E.A. No. 112 of 1992 in

E.P. No. 29 of 1990 in O.S. No. 41 of 1983, dated 18.12.1992.

2. The judgment-debtor, the petitioner herein, filed the said application before the court below contending that the E.P. filed is liable to be rejected

on the ground that such an execution proceedings praying for sale cannot be entertained without there being a request for a fresh attachment. The

case of the petitioner is that the earlier E.P. No. 22 of 1987 having been dismissed for default of the decree-holder, in the absence of specific

order of the executing court that the attachment already effected shall continue or specify the date on which such attachment shall cease the earlier,

attachment effected shall be deemed to have ceased. The court below rejected the claim of the judgment-debtor on the ground that such an

objection is not available to a case, where there had been an attachment before judgment under Order 38, Rule 11 of the Code of Civil

Procedure. The petitioner before this Court has placed reliance upon, a decision of this Court in Athappa Asari v. Chinna Gounder, 93 L. W. 542,

but the court below was of the view that it has no relevance to the case on hand.

3. Though even before this Court a ground has been raised in the memorandum of the revision that the ratio of the decision reported in *Athiappa*

Asari v. Chinna Gounder, 93 L.W. 542 is applicable to the instant case, it has been fairly conceded at the time of hearing that the stand taken on

the basis of the said decision may not be correct and, therefore, the ground in this regard based on the applicability or the said decision of this

Court is not pursued. The learned Counsel for the petitioner, on the other hand, vehemently contended that having regard to the provisions

contained in Sub-rule (2) of Rule 57 of Order 21, the attachment in the present case shall be deemed to have ceased in the absence of any order

by the executing court either continuing it or fixing the date on which such attachment shall cease. I am afraid I cannot countenance such a plea. The

provisions of Rule 11 of Order 38 of the CPC provide that where a property is under attachment, by virtue of attachment having been made

before Judgment under the said order and a decree is subsequently passed in favour of the plaintiff it shall not be necessary upon an application for

execution of such decree to apply for a reattachment of the property. If that be the position and if in such a case, there need not be any request for

an attachment once over again at the time of filing an execution petition, can it be contended that a second execution petition cannot be entertained

or proceeded with unless a reattachment is sought for. There is nothing in the provisions contained in Rule 11 of Order 38 to confine its application

to the first execution petition or to exclude its operation and application to any subsequent execution petitions filed after the termination of the first

execution petition de hors the manner or cause for which the first execution petition came to be terminated.

4. The next aspect that would fall for consideration is whether Sub-rule (2) of Rule 57 of Order 21 would apply to the case on hand. In my view, it

will not. On the very face of the language employed in Rule 57 it has relevance and concern with a case where any property has been attached in

execution of a decree and the court, for any reason, passes an order dismissing the application for the execution of the decree and Sub-rule (2) of

Rule 57 is part and parcel of Sub-rule (1) though it indicates the consequences of a failure on the part of the executing court in passing either way

an order on the fate of an earlier attachment effected in execution proceedings initiated for the execution of a decree. Consequently, the provisions contained in Sub-rule (2) of Rule 57, Order 21, C.P.C. cannot be allowed to supersede a specific stipulation contained in Rule 11 of Order 38 nor could the said provision be dovetailed into Order 38, Rule 11, C.P.C. Having regard to the indisputable fact on record in the particular case on hand that there had been an attachment before judgment, the objection taken for the petitioner to the present execution petition would not only be futile, but also misconceived. The court below cannot be said to be at an error in overruling the objection and rejecting the application of the petitioner. I do not see any patent error of law or jurisdiction warranting interference of this Court. The civil revision petition shall therefore stand dismissed.