
(1942) 11 MAD CK 0003
In the Madras High Court

S.A. Ramanathan Chettiar

APPELLANT

Vs

M.P. Kasi Chettiar alias Meyyappa Chettiar and Others

RESPONDENT

Date of Decision : 02-11-1942

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 29

Citation : (1943) 56 LW 635 : (1943) 2 MLJ 452

Hon'ble Judges : Krishnaswami Ayyangar, J

Bench : Division Bench

Judgement

Krishnaswami Ayyangar, J.—This is an appeal by the judgment-debtor from an order of the Subordinate Judge, Devakottai transmitting the

decree in O.S. No. 33 of 1927 for execution to the Court of the Subordinate Judge at Tanjore.

2. The appellant raised two contentions in the Court below both of which have, however, been overruled The first was that by reason of an order

for stay made by the Subordinate Judge of Devakottai in pursuance of the direction of this Court in C.M.A. No. 403 of 1941, the respondents 1

to 7 were not entitled to execute the decree until the disposal of A.S. No. 243 of 1942 pending in this Court. The latter appeal is from a decision

of the same Court in O.S. No. 29 of 1931 in which the appellant was the plaintiff and the respondents 1 to 7 were defendants. By the final decree

passed in the lower Court it was found that there was a sum of Rs. 476 payable by the appellant to the respondents 1 to 7. This figure was arrived

at after setting off the costs payable to the respondents 1 to 7 against a sum of Rs. 1,000 only found in favour of the appellant. A.S. No. 243 of

1942 which we referred to is an appeal from this decree.

3. The directions contained in the order of this Court in C.M.A. No. 403 of 1941 are couched in the following words:

that the lower Court do pass an order under Rule 29 of Order 21 of the CPC granting stay of execution until the decision of O.S. No. 29 of 1931

on the file of the lower Court.

4. It was in terms of this order that the lower Court has passed its order of stay. On a strict construction of the words used in the order, the

appellant cannot argue that the order of stay continues even after disposal of the suit. That order having been made under Order 21, Rule 29 of the

CPC the learned advocate for the appellant argues that a wider operation ought to be given to it. The rule states as follows:

Where a suit is pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed,

the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.

5. The contention is that the words "until the pending suit has been decided" really mean until not merely this suit is decided but also until the

remedies of the appellant are exhausted by appeals preferred against the decision in the suit. Reliance is placed on a decision of the Calcutta High

Court in Mahesh Chandra Sadhu v. Jogendralal Sarkar (1925) 50 M.L.J. 72 where the words "until the pending suit has been decided" has been

interpreted to mean "until the pending suit has been finally decided," the appeal being apparently regarded as a continuation of the suit. According

to the learned Judges, the word "suit" here includes an appeal or appeals from the decision until a finality is reached. But we find that this decision

was considered in a later decision of the same Court in Radhaballav Khan v. Pyarilal Ghosh I.L.R.(1890) Mad. 504. In this case the learned

Judges emphatically dissented from the view taken in the earlier case and expressed the opinion that if it were necessary they would have referred

the correctness of the earlier decision to a Full Bench, but they did not consider it necessary to do so as the order then under consideration was

not one expressly made under Rule 29. Apart from these two decisions we have not been referred to any other case directly bearing on the

interpretation of the rule under consideration. Mr. Swaminatha Iyer, has, however, referred us to a decision of this Court based upon Section 10 of

the CPC where the words "" pending suit"" occur. In Chinnakaruppan Chetti v. Meyyappa Chetti (1915) M.W.N. 844 Seshagiri Ayyar, J.,

considered that those words meant to include the appellate stages of the suit as an appeal was but a continuation of a suit. We are, however, not

prepared to apply this reasoning to the provisions of Order 21, Rule 29 with which we are here concerned. We are not convinced that the reasons

adduced by the learned Judges who decided the case in Mahesh Chandra Sadhu v. Jogendralal Sarkar (1925) 50 M.L.J. 72 are sufficient to out-

weigh the plain meaning of the words used in the rule. We consider that " suit" in the rule means the suit and not the appeal or appeals therefrom to

the appellate Court. The contention of the appellant based on Order 21, Rule 29 of the CPC must accordingly be overruled.

6. The second point urged is that the learned Judge's conclusion that the application for transmission came within Section 39 of the Code cannot

be supported. Section 39 gives a discretion to the Court to transfer a decree passed by it in execution to another Court if any one of the four

reasons mentioned in the section are found to exist. The first of them is that the judgment-debtor actually and voluntarily resides or carries on

business or works for gain within the local limits of the jurisdiction of the Court to which the decree is sought to be transmitted. In the present case,

it is stated that the judgment-debtor resides both in. Karaikudi and Tanjore. if that is so, it would be a good ground for transmitting the decree to

the Sub-Court at Tanjre. The fact that the judgment-debtor is not liable to arrest in execution of the decree is not in itself a good reason for refusing

to make the order. The Court has a discretion given to it and it must exercise it after taking into account the relevant circumstances. The second

reason given in the section is that the judgment-debtor has no property within the local limits of the jurisdiction of the Court which passed the

decree sufficient to satisfy the decree and has property within the local limits of the jurisdiction of the Court to which the decree is sought to be

transferred. It is this point which has been considered by the learned Subordinate Judge and he has come to the conclusion that the contention that

the appellant has sufficient properties within his jurisdiction was not correct. We are not satisfied that the learned Judge has adequately considered

the several facts which appear on the record. We are told--and it is not denied--that on the decree which is now sought to be executed, there is a

sum of Rs. 10,000 or thereabouts due to the respondents. In respect of this decree a security has been offered in pursuance of an order of this

Court in A.S. No. 438 of 1935 for Rs. 19,000. That security was offered over properties within the jurisdiction of the lower Court, which are

subject to a liability on the part of the appellant to make restitution in respect of monies recovered by him from the respondent in O.S. No. 29 of

1931. It would be necessary to find how much money the respondents are entitled to by way of restitution before it can be known whether those

properties are sufficient to satisfy the decree. It was said that an application for restitution has been already filed claiming a sum of Rs. 55,000 from

the appellant. The appellant, however, says that the claim has been grossly exaggerated. The matter, however, has not been considered by the

learned Subordinate Judge. It may be that the house which was the property given as security in A.S. No. 430 of 1935 has depreciated in value or

for other reasons is not now sufficient to cover the decree held by the respondents. But we consider that the learned Judge should have gone into

the matter more fully than he has done and we are of opinion that he should now be asked to do so.

7. It is hardly necessary to point out that while we set aside his judgment, we leave it open to the learned Judge to reconsider the whole matter

afresh and pass the proper order, in particular, it is open to him to consider the applicability of Clause (d) of Section 39 to the facts of the present

case and to proceed under it if he finds sufficient warrant for it. For the reasons mentioned, the order of the learned Subordinate Judge is set aside

and the case is remanded for fresh disposal in the light of the observations made herein. It is open to the parties to refer to the records of the

proceedings in O.S. No. 33 of 1927 and O.S. No. 29 of 1931 and the appeals therefrom but there shall be no fresh oral evidence adduced by

either of them. We direct each party to bear his own costs of this appeal. The attachment of the fund in the hands of the Official Receiver of

Tanjore will continue.