
(1932) 12 MAD CK 0005
In the Madras High Court

Sarkaru Munisami Achari and Others

APPELLANT

Vs

Chikka Veerappa Setti

RESPONDENT

Date of Decision : 13-12-1932

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 16

Citation : AIR 1933 Mad 403 : (1933) 37 LW 455 : (1933) 64 MLJ 345

Hon'ble Judges : Pakenham Walsh, J

Bench : Division Bench

Judgement

Pakenham Walsh, J.—The decree-holder in O.S. No. 434 of 1919 on the file of the District Munsif of Madanapalle put in an execution

application on 20th August, 1923, under Order 21, Rule 16, Civil Procedure Code, for the transfer of the decree to the District Munsif's Court,

Chittoor, for execution. Defendants 3 and 6 contested the application saying that the decree-was fully satisfied.

2. What took place on the execution application is as follows:--An issue was framed on 6th October, 1923, ""Is the decree fully satisfied? If not,

what is due?"" After various adjournments the Court noted on 5th December, 1923, ""I want to examine the decree-holder. He should appear with

all his account books of 1920 and onwards. Defendants also should bring their accounts. Batta in 3 days."" The decree-holder on the 5th

December, 1923, put in an affidavit, Ex. C, in which he said he had not kept his day books and ledger with him and stated ""as prayed for in the

petition, orders are necessary for taking out execution."" Transfer was ordered on 7th December, 1923. The present execution petition was filed on

22nd November, 1926. The executing Court found it barred by limitation. The lower appellate Court found it not barred. Hence this appeal. The

learned District Munsif did not discuss the steps which were-alleged to save limitation but the lower appellate Court has fully discussed them.

Three steps were relied on before it: the first was the batta application, Ex. B, put in on the 27th November, 1923; the second was a vakalat put in

in the appeal preferred by the judgment-debtors against the transmission of the decree; and the third was the affidavit already mentioned, Ex. C.

The first two matters the learned Subordinate Judge did not find to be steps-in-aid; and the third he found was such. I shall, therefore, first deal

with the third ground on which the appeal was allowed although in point of fact in arguing the case before me the respondent relies rather on the

first ground. I fail to see how Ex. C can be a step-in-aid. The plaintiff had been ordered to produce his accounts and was unable or unwilling to do

so. All that he had to tell the Court was that he was not producing his accounts. The prayer to the Court to proceed with the execution of his

petition was entirely unnecessary since the Court was bound to dispose of it. There are two cases of this Court bearing on the question. One is

Rangachariar v. Subramania Chetty (1920) 12 L.W. 9, a case very similar to the present case which follows Masilamani Mudaliar v. Sethuswami

Aiyar ILR (1916) 41 Mad. 251 : 33 M.L.J. 219 and dissents from Abdul Kader Rowther v. Krishnan Malaval Nair ILR (1913) 38 Mad. 695 :

26 M.L.J. 433. It was sought to distinguish this case on the ground that an order for transmission had already been passed in that case. But even in

that case apparently though the order for transmission had been passed what the petitioner asked the Court to do was actually to send the records

to the other Court. In the case in Masilamani Mudaliar v. Sethuswaini Aiyar ILR (1916) 41 Mad. 251 : 33 M.L.J. 219 an assignee of a decree

filed a petition for execution on 13th July, 1911, and an order of attachment was made on the day of hearing, 12th August, 1911; the petition itself

was dismissed on 26th August, 1911, as he failed to pay batta. A fresh application was filed on 10th August, 1914. It was held that though in the

above circumstances the Court might presume that the decree-holder made an oral application on the day of hearing to proceed with the

execution, such application was not a step-in-aid of execution. It was only on the supposition of such an application for execution being made on

12th August, 1911, that limitation could have been saved at all. It is clear that the application was made before the orders were passed. Further,

Krishna Patter v. Seetharama Patter ILR (1926) 50 Mad. 49 : 51 M.L.J. 480 and Kasivajjala Ramaswami and Another Vs. Boddu Veeranna and

Others, concur with this view. Other Courts no doubt have held a different view. Vide, for instance, Ram Lal v. Udit Narain Singh ILR (1927) 2

Luck. 419. The learned Advocate for the respondent has sought to uphold the appellate Court's decision on the ground that the batta memo was a

step in execution. In Kuppuswami Chettiar v. Rajagopala Aiyar ILR (1921) 45 Mad. 466 : 42 M.L.J. 303 it was laid down that a statement filed

by a decree-holder objecting to the judgment-debtor's application to enter up satisfaction of the decree is not a step in execution. In the other

case, Krishna Palter v. Seetharama Patter ILR (1926) 50 Mad. 49 : 51 M.L.J. 480 it was held that it was immaterial whether an execution

application was or was not pending at the time. As noted in that case the decisions in Calcutta appear to be conflicting. There are cases of

Allahabad directly contrary to the view taken by Madras. (Vide Muhammad Siddiq Khan v. Lala Misiri Lal AIR 1922 All. 432 and Abdul

Quddus v. Sayed Ahmad Husain AIR 1923 All. 415) Lahore takes a different view. (Umar Din v. Ghulam Muhammad AIR 1927 Lah. 653). But

it is argued that the authority in Kuppuswami Chettiar v. Rajagopala Aiyar ILR (1921) 45 Mad. 466 : 42 M.L.J. 303 and Krishna Patter v.

Seetharama Patter ILR (1926) 50 Mad. 49 : 51 M.L.J. 480 has been shaken by Vapu Rowther v. Sivakataksham Pillai ILR (1929) 53 Mad. 390

: 58 M.L.J. 406. I do not find anything in that case which shakes the previous ones. The question there was whether an application for leave to bid

and to set off the price against the decree amount is a step-in-aid of execution. The learned Judges held that it was. Venkatasubba Rao, J., refers

to Dalel Singh v. Umrao Singh ILR (1900) 22 All. 399 on the point as to whether a. mere application to bid would be a step in execution. This

point is not covered by any Madras decision and the learned Judge admits that it does not really arise but that he is disposed to agree with the

Allahabad decision. It was argued that the learned Judge dissented from the position taken up in Krishna Patter v. Seetharama Patter ILR (1926)

50 Mad. 49 : 51 M.L.J. 480 that the step must be one which the Court is asked to take. The learned Judge says on this point:

In one sense this is perfectly true. The learned Counsel contends that the step which the Court is asked to take must be something like attaching or

selling property. I am not prepared to place this restricted view upon the words.

3. The learned Judge does not say that the Court has not to be asked to take some step. In any case the observation is obiter: The other learned

Judge, Madhavan Nair, J., refuses to express any opinion as to whether a mere application for leave to bid in auction is a step in execution. I find

nothing in the case which shakes the authority in *Kuppuswami Chettiar v. Rajagopala Aiyar* ILR (1921) 45 Mad. 466 : 42 M.L.J. 303 and

Krishna Patter v. Seetharama Patter ILR (1926) 50 Mad. 49 : 51 M.L.J. 480. I think it is unnecessary to quote the decisions of other Courts on

this vexed matter in regard to which Venkatasubba Rao, J., has remarked that there is an extreme conflict of view in the decided cases which fail

to disclose even a principle of a general or uniform application. He says:

The wording is so uncertain that it leads to the spending of efforts in barren and fruitless discussion and a good deal of time of the Court is wasted.

5. He suggests that the "Legislature may well with the aid of the decided cases catalogue the applications which, in its opinion, ought to serve as

steps-in-aid of execution." I will therefore merely note some Madras cases. *Raman Chetty v. Ramaswami Pillai* AIR 1928 Mad. 563 was a case

of batta memo for arrest. *Vijiaraghavalu Naidu v. Srinivasalu Naidu* ILR (1905) 28 Mad. 399 was an application for sale proclamation.

Govindaswami Pillai Vs. Govinda Padayachi, was a batta memo to attach properties. It was sought to be argued that while the counter-application

to remove the obstruction caused by the judgment-debtors who stated that the decree was satisfied may not be a step in execution to file batta for

witnesses in the enquiry necessitated by this plea would be a step-in-aid of execution. I entirely agree with the reasoning of the learned Subordinate

Judge, that if the counter itself, the most important document without which none of the subsequent proceedings in execution could take place is

not a step in execution, none of the subsequent steps in removing the obstruction can be steps-in-aid.

6. The last matter relied on as a step in execution, namely, the vakalat filed by the respondent in the appeal appears to me to stand on the same

level as the appeal was only a continuation of the previous proceeding and the vakalat is filed to oppose it. Only one reported case on the matter

was quoted in *Brij Nath Sahai Singh v. Hari Charan Ray* (1918) 48 I.C. 187. It

was there held that the defending of an appeal preferred by the judgment-debtor in execution proceedings is not a step-in-aid of execution within the meaning of Article 182 of the Limitation Act. That decision is therefore against the respondent and it is the more noticeable as coming from the Patna High Court which in other matters takes a more favourable view than Madras with regard to steps for the removal of obstruction being steps-in-aid. It has been suggested to me that I should refer the matter to a Bench but sitting as a single Judge I can find no conflict of authority in Madras on the first and third points dealt with by the Lower Appellate Court. As stated by Ayling, J., in *Kuppuswami Chettiar v. Rajagopala Aiyar* ILR (1921) 45 Mad. 466 : 42 M.L.J. 303:

In a matter like limitation certainty is the first desideratum: it matters comparatively little whether a decree-holder is allowed 3 years or 10 to execute his decree so long as he knows for certain when the time allowed him will come to an end.

7. The Bench decisions of this Court having been uniform with regard to two of the grounds raised I see no reason to make a reference.

8. With regard to the other ground, "the affidavit filed in appeal," it seems that, following the principle laid down by the Madras High Court, the

decision must also be against the respondent and, as I pointed out, the Patna High Court which takes a view favourable to the executing decree-

holder is here against him. The appeal must, therefore, be allowed with costs and the execution petition dismissed.