
(1957) 10 MAD CK 0003
In the Madras High Court

S.K. Mahamad Kasim Rowther

APPELLANT

Vs

Noor Mahamed Rowther and Others

RESPONDENT

Date of Decision : 09-10-1957

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 40 Rule 1

Citation : (1958) 71 LW 448 : (1958) 1 MLJ 94

Hon'ble Judges : Ganapatia Pillai, J

Bench : Single Bench

Judgement

Ganapatia Pillai, J.—The appellant in this Civil Miscellaneous Appeal is the second defendant in O.S. No. 53 of 1956 on the file of the

Subordinate Judge of Pudukottai. That was an application numbered as a suit, made by the first respondent for enforcing an award and passing a

decree in terms thereof. The muchilika on which that award proceeded is Exhibit A-1. The learned Judge in the Court below on the application of

the first respondent appointed a Receiver to take possession of three buses belonging to the partnership which was created under Exhibit B-1. The

plaintiff in the lower Court came forward with the claim that by reason of Exhibit B-1 which was executed on 6th November, 1948, he became a

partner with the first defendant in respect of the buses in question which were being run under the name of Mohideen Andavar Bus Service. The

learned Judge accepted this contention and holding that the second defendant was really a benamidar for the first defendant, appointed a Receiver

to take possession of the buses in dispute.

2. Mr. Ramachandra Ayyar, learned Counsel for the appellant, made the following submissions. The first was that the reference to arbitration

based upon Exhibit A-1 was signed only by the first defendant and was not signed by the second defendant, the present appellant, and

consequently no proceeding taken under the Arbitration Act to enforce the award based upon Exhibit A-1 can reach the appellant or his

properties. The second was that the lower Court had no jurisdiction to pass the order appointing a Receiver for properties which belonged to the

appellant when eo nomine he was not a party to the reference and consequently he should not have been made a party to the proceeding before

the lower Court under Order 1, Rule 10, Code of Civil Procedure. In my opinion, both these contentions are well-founded. It is true, as Mr.

Desikan, learned Counsel for the first respondent, pointed to me, that the first defendant has signed Exhibit A-1 as Mohamad Kasim & Co. From

this he wants me to draw the inference that the father and son were either partners in the bus service or were jointly interested in the buses. He also

pointed out to me the observation of the lower Court that on the date of Exhibit B-1 the second defendant was a minor and that consequently the

benefit of that agreement should go to the first defendant. Mr. Ramachandra Ayyar, learned Counsel for the appellant, disputes the correctness of

the statement of the lower Court that the appellant was a minor on the date of Exhibit B-1. There is no evidence available now to determine this

point. But ex facie Exhibit B-1 purports to be executed by the first respondent plaintiff to the second defendant who is described there as the

proprietor of the Mohideen Andavar Bus Service. Whatever may be the right inter se between the plaintiff and the second defendant, by reason of

Exhibit B-1. it is clear that the very basis of the suit in the lower Court to enforce the award is the contract Exhibit B-1. between the second

defendant and the plaintiff. In the course of the running of the buses after 1948 disputes arose and the parties entered into the Panchayat Muchilika

Exhibit A-1 on 8th February, 1955, by which they named five persons as arbitrators to settle their differences. But unfortunately the appellant was

not a party to Exhibit A-1. It has been laid down by Krishnaswami Nayudu, J., in Subramanian v. Vasudevan Chettiar (1950) 1 M.L.J. 237, that

in a proceeding to enforce an award either at the instance of a party to the award or at the instance of the arbitrator himself, no person can be

impleaded except one who is eo nomine a party to that reference and arbitration and with respect I agree with that opinion. The learned Counsel

Mr. Desikan does not dispute the correctness of the proposition of law laid down by Krishnaswami Nayudu, J., in that case. It follows that whatever may be the rights of the first respondent either in the bus service or in the assets of the firm, the appellant could not have been impleaded as a party to the proceeding O.S. No. 53 of 1956 which should have been confined to persons who were eo nomine parties to Exhibit A-1. The lower Court had therefore no jurisdiction over the present appellant in the proceeding in O.S. No. 53 of 1956 and consequently had no jurisdiction to pass an order appointing a Receiver. Mr. Ramachandra Ayyar, learned Counsel for the appellant, mentioned to me another argument viz., that by reason of the proviso to Rule 1 of Order 40, Code of Civil Procedure, the lower Court had no jurisdiction by making an order appointing a Receiver to prejudice the rights or properties of third parties. Strictly speaking the present appellant cannot be stated to be a third party to the proceeding in which the order of appointment of Receiver has been made. But on a true construction of the nature of the proceeding, it is apparent that the lower Court had no jurisdiction to implead the present appellant. In this view the present appellant can be deemed to be a third party to the proceeding and his rights could not be affected by any order of appointment of a Receiver. The appeal is therefore allowed and the order of the lower Court is set aside. I.A. No. 605 of 1956 on the file of the lower Court is dismissed with costs in both the Courts.