
(1917) 09 MAD CK 0024
In the Madras High Court

Srinivasa Runga Row Pantulu (dead) (Represented by the
Official Assignee High Court) and Another

APPELLANT

Vs

Rajah of Karvetnagar by his Guardian Varadachariar

RESPONDENT

Date of Decision : 19-09-1917

Acts Referred:

Citation : (1918) ILR (Mad) 503

Hon'ble Judges : Kumaraswami Sastriyar, J; John Wallis, J; Bakewell, J

Bench : Full Bench

Judgement

John Wallis, Kt., C.J.—In construing the provisions of Section 41 of the Madras Court of Wards Act I of 1902, regard must be had to the

scope and object of the amendments introduced into the Madras Court of Wards Regulation V of 1804 by Madras Act IV of 1899 and

reproduced without substantial alteration in the Act of 1902. The object was to save the estates of embarrassed proprietors or at least a portion of

them for their owners and it was hoped that with the aid of the additional powers conferred on it the Court of Wards would be able to provide for

the full discharge of the proprietors' debts and liabilities. If not, the creditors were left to their ordinary remedies which were only interfered with as

expressly provided. Among the powers conferred on the Court of Wards and its agent the Collector specified in the order u/s 19 of the Act, was

that of requiring all persons having pecuniary claims on the ward, whether decrees or not, to notify those claims within a specified period, failure to

do so being visited with the penalties prescribed by Sections 41 and 42. With the information thus acquired and with aid of further powers of

ousting usufructuary mortgagees from possession and converting them for the time into simple mortgages and of revising improvident leases it was

hoped that the Court of Wards might find itself in a position to raise sufficient money to discharge all the liabilities. Section 41 imposes two

penalties with regard to claims which have not been duly notified. The first of them is that:

it shall, notwithstanding any law, contract, decree, or award to the contrary, cease to carry interest from the expiration of the period prescribed by

Section 37

2. for notifying claims. This threatened loss of interest was a strong inducement to notify claims and having regard to the express provision that

interest shall cease even when payable under a decree and to the absence of any provision as to its again becoming payable except in the event

specified in Section 55(4), I agree with both the learned Judges that, under the sections, the cessation of interest is final and that the claimant is left

to prosecute his legal remedies for the amount already accrued due to him.

3. As regards the second penalty that the unnotified claim:

shall not be paid until after the discharge or satisfaction of the claims notified or admitted u/s 38,

4. it may be observed in the first place that the provision cannot be construed as depriving secured creditors of their security or as authorizing the

application of money raised on their securities otherwise than in satisfaction of their claims. If not paid the secured creditor is entitled to retain his

security till he is paid. In these circumstances to hold that the Court of Wards is prohibited by this section from raising money on the security and

discharging the secured creditor and applying the surplus in the discharge of the general indebtedness would merely be to prevent the Court from

raising money for the beneficial purposes specified in Section 323(3), CPC and would unnecessarily embarrass it in the discharge of the difficult

function entrusted to it without advantage to any body. This cannot, I think, have been the intention of the Legislature and I think that therefore we

are justified in putting a restrictive construction on this highly general section and holding that in the case of secured creditors who have not notified

it only prohibits payments to them by the Court of Wards out of the unencumbered funds at its disposal and does not prohibit the realization of the

security and the satisfaction out of the proceeds of the secured creditor's claim.

5. If the prohibition of payment in Section 41 is directed to the Court of Wards it

follows of course that it must cease as held by Krishnan, J., when the Court of Wards withdraws from superintendence. I am disposed to think that it must be confined to the Court of Wards and that it does not extend to the authorities executing decrees even during the continuance of the superintendence of the Court of Wards. Creditors whether they have notified or not are not prevented from obtaining decrees and proceeding to execute them. If the execution is left to the Civil Courts, each Court must execute the decree before it with due regard to the rights of secured creditors and to the rights of unsecured decree-holders to rateable distribution. It can hardly have been intended that on each occasion of executing a decree the executing Court should have to embark on an inquiry as to whether all the notified debts have been paid and I think that sufficient effect may be given to Section 41 without construing it as affecting the duties of executing Courts and that if it had been intended to affect them, there would have been express provisions to that effect. Again when the Local Government exercises its power under section, 45 of transferring decrees against the ward to Collector for execution.

6. I think the same considerations apply and that the provisions of Section 41 as to order of payment do not affect the decree collector, as he is

called, in the discharge of his duties under Sections 321--325(C) of the old CPC which are made applicable by Section 47 subject to the rules

prescribed by the Local Government u/s 45(2) which rules however apply only to procedure and do not affect the substantive rights of the parties.

In the case of decrees such as the present obtained by secured creditors ordering the sale of Immovable property in pursuance of a contract

specifically affecting the same the decree collector has the powers conferred upon him by Section 321 and is required by Section 324(A), to apply

the moneys realized by him, subject to the claims of maintenance holders, in execution of the decree for which the Court ordered the sale of the

Immovable property and in the case of other decrees to apply such moneys by way of rateable distribution u/s 323(3); the decree collector is also

empowered to discharge the claim of any incumbrancer whether it has matured or not:

for the purposes of improving the saleable value of the property available or any part thereof or rendering it more suitable for letting or managing or

for preserving the property from sale in satisfaction of an incumbrance.

7. I do not think that the second part of Section 41 was intended to affect the decree collector as regards these powers and duties.

8. This is an attempt to execute a mortgage decree passed in 1895. It is stated by the District Judge of North Arcot in his order on the connected

Execution Petition No. 79 of 1912, dated 21st November 1912, that the Court of Wards assumed management on 26th July 1899 and gave up

management of the estate on 27th September 1905 and that decrees were transferred to the Collector for execution and retransferred to the Civil

Courts on 27th February 1906. It is also stated that the Court of Wards again assumed superintendence on 17th August 1907, and relinquished it

on 15th January 1910, but it is not stated that decrees were again transferred to the Collector for execution during that period and the execution

still remains with the Civil Courts. As it is now more than eighteen years since the Court of Wards first took over management and the other

secured and unsecured claims have not yet been satisfied it seems exceedingly unlikely that they ever will be satisfied and if they are not, the money

which has been realized on account of the defendant's security and which is in Court must according to the District Judge's order remain there for

ever, a result which the Legislature can certainly not have contemplated. In passing the order the learned District Judge relied on a ruling contained

in a judgment to which I was a party with Krishnaswami Ayyar, J., in *Depuru Kalappa Reddi v. Umada Rajah* (1911) 1 M.W.N. 75 that the

provisions of Section 41 are absolute except in so far as they are cut down by Section 55(3) and Oldfield, J., has also relied on this ruling. That

was an appeal against an order in which the District Judge had held that the zamindari was not liable to be proceeded against for many debts

incurred by the previous holder and the order was reversed on the ground that his view was wrong. Apparently the District Judge's ruling in that

case that Section 41 was not applicable when the decree was being executed in the Civil Court was also questioned before us; and, as to this, I

now think we expressed ourselves too broadly, because while I am still of opinion that the provisions of Section 41 as to the cessation of interest

continue to apply, I have come to the conclusion on a fuller consideration of the subject that the further provisions of the section are inapplicable

for the reasons already given to the present case. In the result we agree with the order proposed by Krishnan, J. Costs of the appeal to abide the result.

Bakewell, J.

9. I agree.

Kumaraswami Sastriyar, J.

10. I agree.