
(1893) 01 MAD CK 0010
In the Madras High Court

Srinivasa Sastrial

APPELLANT

Vs

Sami Rau

RESPONDENT

Date of Decision : 24-01-1893

Acts Referred:

Citation : (1894) ILR (Mad) 180

Hon'ble Judges : Arthur J.H. Collins, C.J.;Parker, J

Bench : Division Bench

Judgement

1. We have no doubt that a suit for a declaratory decree is maintainable. The plaintiff's petition was put in u/s 278 of the CPC and a suit u/s 2831

is his only possible remedy.

2. The next point urged is that an appeal should have been preferred against the order of the District Munsif directing a second attachment. But that

order was a mere direction of the Court without notice to either party and in no case could defendant have been made a party to the appeal if there

had been one.

3. The decision quoted in Puddomonee Dossee v. Roy Muthooranath Chowdhry 12 B.L.R. 411 lays down no general rule, but the effect of it is

that it is a matter of inference in the particular case whether the striking off of an execution petition terminates an attachment. We agree with the

District Judge that in this case there was no intention to abandon or to terminate the attachment. This may be inferred not only from plaintiff's

subsequent conduct, but from the very terms of the sale-deed under which the defendant purchased, provision being therein made that defendant

should pay off the balance of the decree debt in the suit in which the attachment had been made. No mention in terms is made of the attachment,

but it is a legitimate inference that it was then regarded as subsisting.

4. We dismiss the second appeal with costs.

1.

Section 283: The party against whom an order under sections

Saving of suits to es- 280, 281 or 282 is passed may institute a suit to establish the

establish right to attached right which he claims to the property in dispute, but subject

property. to the result of such suit, if any, the order shall be conclusive.