

(1924) 04 MAD CK 0029
In the Madras High Court

Srinivasachariar

APPELLANT

Vs

Appavoo Reddy alias Ayyanna Reddi and Others

RESPONDENT

Date of Decision : 02-04-1924

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58

Citation : AIR 1924 Mad 889 : (1924) 47 MLJ 720

Hon'ble Judges : Krishnan, J

Bench : Division Bench

Judgement

Krishnan, J.—In this case a somewhat novel point arises for decision. There was a decree in the District Munsif's Court against one Bole

Reddi and another. The property in question here was attached in execution of that decree. The property had also been already attached by an

order of attachment before judgment by the Subordinate Judge of Coimbatore. The Subordinate Judge has passed a decree in his suit and the

attachment before judgment took effect as an attachment after decree. The property was sold by the District Munsif in execution of the decree in

his Court, and has been purchased by the appellant before us. Subsequently the decree-holder in the Subordinate Judge's Court applied to the

Subordinate Judge to have the property sold in execution of his decree. Thereupon the appellant here put in a petition to the Subordinate Judge

asking that the property should not be sold in execution of his Court decree as it was no longer the property of the judgment-debtor, the title to the

property having passed to him by his purchase in the execution of the Munsif's Court decree. The Subordinate Judge rejected this application as

being an incompetent application altogether. The appeal is against that order. The Subordinate Judge rightly remarks that the application cannot be

treated as an application under Order 21, Rule 58, C.P.C. for that rule is only applicable only when the objection taken is that the property attached is not liable to attachment. In this case, at the time the Subordinate Judge attached the property, it was still the property of the judgment-debtor and no objection could have been raised to the attachment when it was put on the property. The Subordinate Judge then proceeds to say in his order that the present application is not one contemplated by any, provision of the CPC and he dismisses it on that ground. We are unable to agree with him. He has quoted the ruling in Mahadeo Lal v. Darsan Gope 15 CWN 542 as an authority for his position. In that case one of the decrees in execution was a mortgage decree which did not require any attachment to be put on the property. Here we have a case where two Courts have attached the same property in execution of money decrees in each Court. This is a case which falls u/s 63 of the Civil Procedure Code. Ordinarily under Clause (1) the Court which should have realized or received such property and determined any claim thereto or any objection to the attachment thereof was the Court of the highest grade, i.e., the Subordinate Judge's Court. But for some reason not clear on the record, it was the Munsif that caused the sale of the property and not the Subordinate Judge. Clause (2), which has been newly introduced in Section 63 says, "" Nothing in this section shall be deemed to invalidate any proceeding taken by a Court executing one of such decrees."" It would follow from this clause that the sale by the Munsif in execution of his decree was not invalidated by the fact that the property was under attachment by the Subordinate Judge. The section clearly validates such sales. There was a considerable difference of opinion at one time as to the result of two Courts attaching a property and each selling it itself. It was first held in Madras that the sale of the superior Court even if later in time prevailed and passed the title of the property, the sale by the inferior Court being invalidated. Vide Muthukaruppan Chetty v. Muthuramalinga Chetty ILR (1883) M 47. That view was somewhat modified by this High Court in Kunhayan v. Ihukutti ILR (1898) M 295 : 1898 9 MLJ 1, where it was held that the prior sale by the inferior Court would pass title to the property if it had no notice of the proceedings before the superior Court, but if the inferior Court had notice of the proceedings of the superior Court and still proceeded to sell, that sale would be vitiated. The Allahabad High

Court seems, to have taken a different view altogether, namely, that the sale by the first Court prevailed, whatever the grade of the Court that

made the sale may be. The introduction of Clause (2) in Section 63 of the CPC seems to be intended for the purpose of setting this dispute at rest.

It clearly lays down that anything done by the Court executing the decree shall not be deemed to be invalidated because of the existence of the

attachment on the property by the superior Court irrespective of any question of notice. That being so, we must hold in this case that the sale by

the Munsif passed title to the appellant. Then the question is whether the appellant can adopt any procedure under the CPC to bring to the notice

of the Subordinate Judge the fact that the title to the property had already passed to him and stop the sale of it in execution of the Subordinate

Judge's decree. The Subordinate Judge says that there is no such provision in the Code, but we think the matter is one which can be brought

within the terms of Section 47 of the Civil Procedure Code. The purchaser is certainly a representative of the judgment-debtor even though he is a

Court-auction purchaser. See *Veyindrumuthu Pillai v. Maya Nadan* ILR (1919) M 107 : 1919 38 MLJ 32. The appellant was therefore a

representative of the judgment-debtor in the suit before the Subordinate Judge and as such representative he was entitled u/s 47 to apply to the

Subordinate Judge to stop the sale of the property, on the ground that the title to it had passed to him. That is certainly a matter relating to

execution. The words of Section 47 being quite wide enough to include such a contention, the Subordinate Judge should have entertained this

application. The contrary view was no doubt taken in *Mahadeo Lal v. Darson Gope* 15 CWN 542, but with all respect we are unable to follow

the reasoning in p. 544 where the learned Judges say, "" We are unable to hold that the present respondent petitioners can be said to be the

representatives of the judgment-debtors for the purpose of that section, namely, Section 47. They are, in fact, setting up an antagonistic title based

on their purchase."" That is not the view that has prevailed in Madras, as the decision of the Full Bench referred to above shows. We are unable,

therefore, to follow the ruling in *Mahadeo Lal v. Darsan Gope* 15 CWN 542 on that point. The question then is what is to be done in this case ? If

there are any allegations of fraud in obtaining the decree in execution of which the appellant purchased the property or any other ground which

would vitiate the decree itself, it would no doubt be a ground for enquiry. The order of the Subordinate Judge refusing to entertain the petitioner's

application must be set aside and the case is remanded to him for a fresh disposal according to law in the light of the observations we have made

above. The respondent will pay the costs of this appeal to the appellant. The costs in the Lower Court will be disposed of by that Court.

2. The Civil Revision Petition is dismissed but without costs.