
(1923) 01 MAD CK 0036
In the Madras High Court

Subbier		APPELLANT
	Vs	
Moideen Pitchai and Others		RESPONDENT

Date of Decision : 18-01-1923

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 63, 11

Citation : AIR 1923 Mad 562 : 72 Ind. Cas. 558 : (1923) 17 LW 582 : (1923) 44 MLJ 588

Hon'ble Judges : Walter Schwabe, C.J.;Wallace, J

Bench : Division Bench

Judgement

Walter Schwabe, C.J.—In this case the facts are that a decree-holder in a Small Cause Suit applied for attachment of a debt alleged to be

due by one Khader Moideen to the judgment-debtor. Notice of that application was served, upon Khader Moideen as garnishee and also upon

the widow of the judgment-debtor as representing his estate. She did not appear but the garnishee appeared and put in a counter-statement in

which he alleged three things, first, that the debt had never been due to the judgment-debtor, second, that it had been assigned and he had

promised to pay the assignee; and thirdly, that the amount of the debt was not Rs. 350 as claimed by the decree-holder but Rs. 300. That

application came before the District Munsif the garnishee appearing, and the District Munsif passed an order in these words: ""Attachment is

confirmed."" In due course, the debt which had been attached was brought to sale as the property of the judgment-debtor in the Small Cause Suit

and was purchased by the present plaintiff, who was himself the decree-holder. The present plaintiff then sued to recover the debt.

2. It has been held by the District Munsif and on appeal by the Subordinate

Judge that there never was any debt due by the garnishee to the judgment-debtor, and in fact that the debt which had been supposed to be due to the judgment-debtor was due not to him but to his widow, and consequently the suit was dismissed.

3. The question for our determination is whether it was open to those Courts to go into this question at all, and, in my judgment, it was not. By

Section 11 of the Civil Procedure Code, no Court shall try any suit or issue in which the matter directly or substantially in issue has been directly

and substantially in issue in a former suit between the same parties. Now the whole matter decided was directly in issue in the execution and

garnishee proceedings in 1913. It is true that the order made in 1913 was not at once final, because, under Order XXI, Rule 63 where a claim or

an objection is preferred, the party against whom an order is made may institute a suit to establish the right which he claims to the property in

dispute but subject to the result of such suit, if any, the order shall be conclusive. Now the garnishee did not choose within the time limited by the

Indian limitation Act, namely, a year, to bring in any such suit, and so the matter became conclusive. It having been decided by the Court in 1913

that the debt was a debt for Rs. 350 due by the garnishee to the judgment-debtor, as long as that order stands; it cannot be re-agitated as between

the parties to those proceedings.

4. We are told that after service upon him of the notice calling upon him to show cause why this debt should not be attached the garnishee acted

upon a notice he had received of an assignment of the debt to a third party and paid the full amount to the third party. I should very much doubt the

truth of that statement, because it is exceedingly unlikely, having got notice from the Court that someone was claiming, that he should have paid this

alleged assignee pending the hearing of the application. If he did so, and the result of this judgment is that, he will now have to pay over again to

some one else, he has no one to blame but himself for not taking the steps which were provided for him by the Code, namely, of suing to establish

his right under Order XXI, Rule 63, within a year. I suspect the reason why he did not do so was that he knew at that time he would not succeed.

5. The decrees of the lower Courts must, therefore, be set aside and the plaintiff will get a decree, in the usual mortgage-decree form, against the

defendants Nos. 1 to 5 for Rs. 350 and interest thereon at six per cent, per annum from the date from which interest was due on the mortgage i.e.,

May 2, 1912, to the date of payment with costs both here and in the Courts below. Time for payment six month.

Wallace, J.

6. I agree.