
(1925) 05 MAD CK 0001
In the Madras High Court

Subramania Chetty

APPELLANT

Vs

Ramaswami Chetti and Others

RESPONDENT

Date of Decision : 01-05-1925

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 73

Citation : 91 Ind. Cas. 11

Hon'ble Judges : Krishnan, J

Bench : Single Bench

Judgement

Krishnan, J.—This is an application to revise an order-passed u/s 73 of the C.P.C. by the District Munsif of Devakottai. The petitioner

before me was one of the decree-holders against a common judgment-debtor, whose assets had been realised within the meaning of Section 73 of

the C.P.C and were held by the Court. Section 73" says ""Where assets are held by a Court and more persons than one have before the receipt of

such assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and

have not obtained satisfaction thereof, the assets, after deducting the costs of realization shall be rateably distributed among all such persons.

Now, the petitioner before me put in an application for execution of his decree which was a decree for payment of money passed against the same

judgment debtor, to arrest him, and this application had been admittedly made before the receipt of the assets with which we are concerned in this

case. His application to be paid rateably from the assets had, however, been rejected on the ground that, when he applied for the arrest of the

judgment-debtor, that man was not living within the jurisdiction of the Munsif's Court but was living in Penang, where the District Munsif, of

course, had no jurisdiction and could not, therefore, have ordered his arrest. This finding of fact has been arrived at mainly on the ground that in

another petition for execution by the same decree-holder he has stated that the man was living at Penang; but he has explained it by saying that that

statement was wrongly put in by the Vakil's clerk who drafted that application. It is, therefore, doubtful whether the judgment-debtor was, on the

date on which the application was made in Penang. Assuming, however, that the judgment-debtor was at Penang at the time of this decree-

holder's application for arrest, the question is, does that prevent him from obtaining the advantage of rateable distribution? The section is intended

to distribute equitably the assets of the common debtor realised by the Court among the decree-holders and the one condition that is laid down to

make sure of the fact that those creditors have been diligent is that the creditors must have previously applied for execution of their decrees, this

condition excluding creditors who have taken no steps to realise their debts; but there is no condition that the execution application put in by the

party should be such as would have ended in his successfully obtaining satisfaction of his decree. The only two conditions laid down are that he

must have a money-decree against the same person and that he must have applied for execution of that decree before the assets were realised. If

these two conditions are fulfilled, he is entitled to join in the rateable distribution. In the present case, I see no reason to exclude the decree-holder

on the finding of the District Munsif. The fact that his application was for the arrest of a person who could not have been arrested is quite

immaterial so far as Section 73 is concerned. It is even possible to imagine that, though the judgment-debtor was not, on the date when the

execution application was put in, living within the jurisdiction of the District Munsif, he might come there before the order is passed by the District

Munsif passing the order, if, by the time he passes his order, the judgment-debtor is within his jurisdiction, although at the time the application was

made, he was not within his jurisdiction. But these questions are outside the scope of Section 73; All that the Court has to be satisfied about is that

there is a money-decree of which satisfaction has not been obtained against a judgment-debtor and that the decree-creditor has shown his

diligence by applying for execution of that decree before the assets were realised. On these conditions being fulfilled the decree-holder-creditor is

entitled to join in the rateable distribution. No case exactly in point has been brought to my notice, but some cases have been cited with reference

to Article 182 of the Limitation Act which speaks of applications for execution made in accordance with law. Even according to those cases which

construe those words "Applications in accordance with law", an application like the present one would be fully in conformity with the requirements

of the law; though it prayed for a relief which perhaps the Court could not have granted, it is still treated as an application in accordance with law

for the purpose of Article 182 of the Limitation Act: see *Bando Krishna Kanbargi v. Narasimha Konber Deshpande* 24 Bom. L.R. 861. I hold,

therefore, that the petitioner before me was entitled to join in the rateable distribution.

2. It has been urged before me by the learned Vakil for the respondent that, under Section 73 of the C.P.C. there is a special remedy provided,

namely, that of a suit, I should not interfere in revision at all. No doubt, in some instances, Courts have held that it will be convenient to make the

parties adopt that remedy, but that provision does not prevent a Court from interfering u/s 115 where there is a manifest error in the order u/s 73,

and putting that error correct, as otherwise the parties will be driven to unnecessary litigation. I think this is a case in which a manifest error has

been made by the District Munsif and I feel, therefore, justified in interfering with the order of the lower Court and I modify that order by directing

the District Munsif to make a fresh order u/s 73 giving rateable distribution to the petitioner before me for both of his decrees. The case will be

remitted to the District Munsif for the purpose of passing fresh orders. Each party will bear their own costs of this petition.