

**(1941) 09 MAD CK 0047**  
**In the Madras High Court**

|                                        |            |
|----------------------------------------|------------|
| Sunkarapalli Ranganayakulu and Another | APPELLANT  |
| Vs                                     |            |
| Gona Gopayamma and Another             | RESPONDENT |

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**Date of Decision :** 22-09-1941

**Acts Referred:**

**Citation :** AIR 1942 Mad 323 : (1942) 55 LW 170 : (1942) 1 MLJ 341

**Hon'ble Judges :** Wadsworth, J

**Bench :** Division Bench

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## Judgement

Wadsworth, J.—This civil revision petition arises out of an application u/s 23 of Act IV of 1938. The petitioners here are the decree-holder and the Court auction-purchaser in execution of the decree. The decree in question was passed in a Small Cause suit and is dated 30th October, 1933. The present second respondent was the judgment-debtor. In June, 1934 the decree-holder in execution attached a mortgage debt due to the judgment-debtor, the second respondent. The attachment was made under Order 21, Rule 46, Civil Procedure Code. On the 9th October, 1935, while the attachment was still pending, the judgment-debtor transferred her mortgage right to her daughter, the first respondent. In November, 1937 the mortgage right was sold by the Court in execution of the Small Cause decree and it was purchased by the second petitioner here. On the 7th January, 1938, as would appear from the execution records, full satisfaction of the Small Cause decree was recorded. On the 15th June, 1938, after Act IV of 1938 had come into force, the judgment-debtor and her transferee both joined in an application u/s 23 to set aside the sale of the mortgage right. We will assume without deciding that a sale of a mortgage right, even though carried through under the procedure prescribed in Order 21 for the sale of debts and other movable properties is, for the purpose of Section 23" of Act IV of 1938, a sale of immovable properties. It is difficult to see, even assuming so much, how this application was entitled to succeed as it did in the lower Court. In the first place, the original judgment-debtor, the second-respondent, has not been proved to have any saleable interest in agricultural lands. Her daughter, the first respondent was at the relevant title an

agriculturist. The actual judgment-debtor, not being shown to be an agriculturist, cannot apply u/s 23. It is contended that the transferee who is an agriculturist can apply u/s 23 and for this purpose it is urged that she was under what has been described as a property liability to satisfy the decree. The contention is of course based on the case of Perianna Goundan Vs. Sellappa Goundan and Others, and also on a decision of ours in Palani Goundan v. Peria Goundan (1949) 2 M.L.J. 887 where following Perianna Goundan Vs. Sellappa Goundan and Others, , we held that a purchaser of the equity of redemption who is bound by a mortgage decree, being a debtor, could also be deemed to be a judgment-debtor, though not actually a party to the suit. It does not seem to us, however, that either of these cases is an authority for the view that, when property has been attached in execution of a money decree and is sold in disregard of that attachment, the purchaser is liable to pay the decree debt. The true way of looking at the matter having regard to the terms of Section 64, Civil Procedure Code, is that the transfer is void as against claims enforceable under the attachment, so that the transferee can be ignored by the decree-holder and the attachment can be worked out by proceedings in execution against the transferor as still being the owner of the property for the purpose of the execution of his decree. The attachment creates no charge and there is therefore no property liability to pay the decree in so far as the property which passed to the transferee pending the attachment is concerned. If this reasoning is correct it follows that the first respondent, who is the only agriculturist, is not a judgment-debtor.

2. There is another difficulty in the way of the applicants. The decree in this case was satisfied on 7th January, 1938. Section 7, which is the basic section for most of the provisions of Act IV, declares that,

all debts payable by an agriculturist at the commencement of this. Act, shall be. scaled down, in accordance with the provisions of this chapter.

It does not appear that any debts incurred after the commencement of the Act will come under the general provisions though they may be covered by Section 13. Nor does it appear that any debts which have ceased to be payable when the Act came into force can be affected in any way by any provision of the Act. Section 19, which is the provision relating to decrees, contemplates decrees which are not yet satisfied. Section 23 permits a sale to be set aside on the application of an agriculturist judgment-debtor who is "entitled to the benefits of this Act" and we have held that he must be entitled to the benefits of the Act with reference to the particular debt and not merely generally. It does not appear to have been the intention of the Legislature in framing this section to allow an agriculturist to get a Court sale set aside merely in order to force the decree-holder to execute over again a decree which has already been satisfied before the Act came into force and in respect of which no debt subsists on, 22nd March, 1938. No doubt this view involves the consequence that when a sale held between 1st October, 1937 and 22nd March 1938 has resulted in the full satisfaction of the decree against an agriculturist, it would not be susceptible to

attack under the Act, whereas, if the sale results in a small amount being still due under the decree, the agriculturist, who owes that amount, would be entitled to have the sale set aside and the whole decree re-opened. But we are not convinced that this apparent anomaly is a sufficient ground for reading into this Act a provision which it does not contain, for extending the benefits of the Act to debts which have been fully discharged before the 22nd March, 1938. The view set forth here has been taken by two decisions of single judges reported in *Gopala Menon Vs. Punnoli Korath Meenakshi Arama Karnavastri and Others*, and *Thiravia Nadar Vs. Paulraj Chelliah Nadar and Others*,

3. It follows therefore that this civil revision petition is entitled to succeed and the order of the lower Court is set aside. Respondents 1 and 2 will pay the costs of the petitioners in both the Courts--one advocate's fee.