

**(1908) 09 MAD CK 0030**  
**In the Madras High Court**

|                                  |    |            |
|----------------------------------|----|------------|
| T. Ranganatha Tawker and Another |    | APPELLANT  |
|                                  | Vs |            |
| T. Seetharama Chetty and Another |    | RESPONDENT |

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**Date of Decision :** 29-09-1908

**Acts Referred:**

**Citation :** 5 Ind. Cas. 820

**Hon'ble Judges :** Sankaran Nair, J; Miller, J

**Bench :** Division Bench

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## **Judgement**

1. In our opinion the plaintiffs were not entitled to rateable distribution, because at the date on which the assets were realized, there was no

application for execution presented by them, pending in the Court which conducted the execution.

2. The plaintiffs applied in April 1900, for attachment of the 1st defendant's right to receive a monthly allowance and for an injunction directing the

disburser of the allowance to pay it into Court as it fell due. The Subordinate Judge did not attach the right, but in his order of the 23rd of April

1900, directed notice to be issued as regards the prayer for injunction. On the 4th of May, he made an absolute order directing the disburser of the

allowance of the Dewan Trustee of Ramnad to pay the allowance into Court, and on the 18th of July, payment not having been made he struck off

the execution application of the plaintiffs.

3. It is not denied that this last order closed the proceedings of the plaintiffs' application unless the order of the 4th May directing payment into

Court can be taken as an order effecting an attachment u/s 268 of the Civil Procedure Code.

4. We think it is clear from his order of the 23rd April that the Subordinate Judge

did not intend to act u/s 268, and that section does not

contemplate an order for payment into Court nor the issue of an injunction. The order of the 4th of May did not, therefore, effect an attachment u/s

268, Civil Procedure Code, and the application of the plaintiffs was finally disposed of on the 18th of July.

5. That being so on the authority of *Triruchittambala Chetti v. Seshaayyengar* 4 M.k 383 and other cases we must hold that the plaintiff had no

right to rateable distribution u/s 295, Civil Procedure Code, and their suit should have been dismissed.

6. Reliance is also placed upon a former application for execution disposed of in March 1900, but we find that in their subsequent application

Exhibit C, the plaintiffs state that the former petition was disposed of on the ground that the allowance which it was proposed to attach had been

paid and there was, therefore, nothing to be attached. The order striking off that application in these circumstances disposed of it finally.

7. We, therefore, set aside the decrees of the lower Courts and dismiss the suit with costs throughout against the appellants