
(1912) 02 MAD CK 0005
In the Madras High Court

T. Seetharama Chettiar and Others

APPELLANT

Vs

M. Kristna Row, the Devan Trustee of Ramnad Samastanam,
(vacated the office), Rajah Rajeswara Sethupathi alias
Muthuramalinga Sethupathi

RESPONDENT

Date of Decision : 08-02-1912

Acts Referred:

Citation : 15 Ind. Cas. 406

Hon'ble Judges : Ralph Benson, J; Bakewell, J

Bench : Division Bench

Judgement

1. The first question in this case is as to the effect of the order of the 31st January 1902, ending: with the words ""Petition struck off."" It has been

repeatedly held that such an order is not known to the law, and that its effect is to be determined by a consideration of the circumstances of the

case and the terms of the order itself. In the present case, the application was for execution of a decree by sale of a debt, and as we read the

order, it states that the applicants had failed to pay certain warrant fees into Court, and the sale had been stayed by an order of the High Court and

then adds: ""Petition struck off."" We do not agree with the District Judge that the words regarding the stay of execution were written by a clerk and

form no part of the order of the Court. If the applicants had made the requisite payment, the Court could not at that date have proceeded with the

application, and there was, therefore, no reason for punishing the applicants for their default by the dismissal of their petition; and it would have

been a reasonable exercise of the Courts' discretion to adjourn the matter pending further orders of the High Court.

2. We are of opinion that the terms of the order show that the Court merely

declined to proceed further with the application at that time, and that it amounts to an adjournment sine die. We do not think that proceedings subsequently taken by the applicants have any bearing upon the question of what was the intention of the Court when it passed the order.

3. The second question is, whether the sum of which the appellants claim rateable distribution, was realised in execution. A compromise-decree was made in a suit to which the appellants were parties, which we construe as directing payment by the Rajah of Ramnad of a certain sum to the plaintiff therein, and that any monies recovered should be subject to rateable distribution among the creditors of the Rajah who might be entitled thereto. As trustee under a deed of settlement executed by the Rajah, the then plaintiff was bound to pay a monthly allowance to the Rajah, and the learned District Judge was apparently of opinion that the plaintiff should have withheld that payment from the Rajah, and distributed the amount among the parties to that suit. No such direction is, however, contained in the compromise-decree, and it would scarcely have been safe for the plaintiff to have paid away the trust monies in his hands otherwise than in accordance with the terms of the trust or the express order of the Court.

The compromise decree is a personal decree against the Rajah and could only be enforced by the ordinary process of execution; and the monies in Court were realised under such process. In this view, there is no ground for the suggestions of the District Judge that the action of the then plaintiff amounted to a fraud upon the Court. For these reasons, we are of opinion that the monies distributed among the respondents were realised in execution within the meaning of Section 295, CPC of 1882, at a time when an application by the appellant for execution was pending in the Court, and that they were, therefore, entitled to bring this suit for a refund. The decree of the lower Appellate Court is reversed and that of the Subordinate Judge restored. Having regard to all the facts of the case, we make no order as to costs, in this or in the lower Appellate Court.