
(1946) 04 MAD CK 0020
In the Madras High Court

The Official Receiver of Ramnad

APPELLANT

Vs

N.P.A.K. Muthiah Chettiar

RESPONDENT

Date of Decision : 15-04-1946

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 16, 146

Citation : AIR 1947 Mad 34 : (1947) ILR (Mad) 307 : (1946) 59 LW 445 :
(1946) 2 MLJ 132

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—This is an appeal from an order passed by the Subordinate Judge of Devakottai in proceedings instituted

for the execution of a decree passed by the Rangoon High Court and transferred for execution to the District Court of Ramnad before the

separation of Burma from India on the 1st April, 1937. The appeal calls for the consideration of Order 21, Rule 16, Section 44-A, and Section

146 of the Code of Civil Procedure.

2. On the 27th July, 1931, the original side of the Rangoon High Court passed a decree in favour of the AT. K.PL.SP. Chettiar firm against two

defendants, the K.S.R.M. Chettiar firm and the N. P. A. K. Chettiar firm. The proprietor of the N.P.A.K. Chettiar firm was one Muthiah Chettiar.

On appeal the Appellate Side of the Rangoon High Court held that the K.S.R. M. Chettiar firm was. not liable, but confirmed the decree in so far

as it affected the N. P. A. K. Chettiar firm. The appellate decree was passed on the nth May, 1933, and was for the sum of Rs. 26,289-6-0 with

further interest and costs.

3. In 1934, on the decree-holder's application, the Rangoon High Court transferred the decree to the District Court of Ramnad for execution. The order of transfer was accompanied by a certificate of non-satisfaction. On the 2nd November, 1934, the District Judge of Ramnad transferred the decree to the Court of the Subordinate Judge of Devakottai. In E.P. No. 2 of 1935 of the Court of the Subordinate Judge of Devakottai the decree-holder applied for execution by the arrest of Muthiah Chettiar, the proprietor of the N. P.A. K. firm. On the 12th March, 1935, an order for his arrest was passed; but as the decree-holder had failed to pay the batta charges, the application was dismissed on the 20th March, 1935. Eight days later the decree-holder filed another application (E.P. No. 112 of 1935) in which he again asked for the judgment-debtor's arrest. This application was dismissed on the 18th April, 1935, because the judgment-debtor could not be found. On the 23rd February, 1937, the decree-holder filed a third application (E.P. No. 73 of 1937). In this application he applied for the attachment and sale of the properties owned by the judgment-debtor. On the 8th April, 1937, an order for attachment was passed and the sale fixed for the 15th October, 1937.

4. In 1929, an application had been filed in the Court of the Subordinate Judge of Tinnevely for the adjudication in insolvency of the proprietor of the N.P.A.K. firm. On the 11th September, 1937, an order for adjudication was passed. This resulted in the order for sale passed in E.P. No. 73 of 1937 being stayed, and the application being declared to be "" closed."" Muthiah Chettiar appealed to the District Court against the order of adjudication passed against him and his appeal was successful. The District Judge's order was confirmed by this Court.

5. The AT. K. PL. SP. firm was carried on by one Subramaniam Chettiar, who on the 26th October, 1940, was himself adjudicated an insolvent. As the order of adjudication was passed by the Subordinate Judge of Sivaganga the insolvent's estate devolved upon the Official Receiver of Ramnad. On the 7th December, 1940, in E.P. No. 46 of 1941, the Official Receiver applied to the Subordinate Judge of Devakottai to continue the E.P. No. 73 of 1937 which was closed on the 23rd December, 1937. On the 11th February, 1941, the Subordinate Judge passed an order attaching the properties which had already been attached in E.P. No. 73 of 1937. This application became infructuous because the Official

Receiver failed to pay the batta charges. By an order dated the 10th March, 1941, the application was dismissed.

6. On the 7th February, 1944, the Official Receiver filed E.P. No. 102 of 1944, in which he asked the Court to treat this petition as being in

continuation of E.P. No. 73 of 1937 and to attach once again the same properties. This is the application which has given rise to the appeal. The

judgment-debtor filed a statement of objections one of which prevailed. This objection was that the Official Receiver had failed to apply to the

Rangoon High Court under Order XXI, Rule 16, Civil Procedure Code, to recognise him as the transferee of the decree by operation of law. The

Official Receiver has appealed.

7. The Subordinate Judge erred in holding that Order XXI, Rule 16 applied. This is very properly admitted by Mr. Viswanatha Sastri, who

appears on behalf of the judgment-debtor. That rule only applies to decrees passed by Courts to which the CPC applies. The provisions of the

Code are regulations dealing with the jurisdiction and governing the procedure of the Courts in British India. They can have no application outside

British India. (See Rama-bhadra Raja Bahadur v. Maharajah of Jeypore (1919) 37 M.L.J. 11 : L.R. 46 IndAp 151 : ILR 42 Mad. 813 and

Nilkantha Balwant v. Vidya Narasinh (1930) 59 M.L.J. 379 : L.R. 57 IndAp 194 : ILR 54 Bom. 495 . After the separation of Burma from India

in 1937, the decree of the Rangoon High Court became a decree of a foreign Court and consequently Order XXI, Rule 16 no longer had

application.

8. As Order XXI, Rule 16 does not apply, Mr. Sitarama Rao on behalf of the appellant says that the case is governed by Section 44-A and

Section 146. Section 44-A deals with the execution of a decree passed by one of the superior Courts of the United Kingdom or of a reciprocating

territory and which has been filed in a District Court in India. The section says that in such a case the decree may be executed in British India as if it

had been passed by the District Court itself. Burma is a reciprocating country. It was declared so to be by the Central Government on the 26th

March, 1939. The notification is reproduced at page 166 of Volume I of the Civil Rules of Practice and Circular Orders of this Court. A certified

copy of the decree of the Rangoon High Court was admittedly filed when the

execution proceedings first started in the Ramnad District Court and with it a certificate of non-satisfaction. The filing of the copy of the decree and the certificate of non-satisfaction in effect complied with the requirements of Sub-sections (1) and (2) of Section 44-A.

9. Section 146 reads as follows:

Save as otherwise provided by this Code or by any law for the time being in force where any proceeding may be taken or application made by or

against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him.

10. For the appellant it is said that inasmuch as Order XXI, Rule 16 does not apply here and there is no conflicting provision in any other part of

the Code the Official Receiver had the right u/s 146 of applying to execute the decree without the permission of any Court. Undoubtedly the estate

of the insolvent-plaintiff had devolved upon him and that being so, he was entitled to apply for the execution of the decree or to continue any such

application which might be pending. In *P.M.A.R.M. Muthiah Chettiar Vs. Lodd Govinda Doss Krishna Doss Varu and Another*, , a Full Bench of

this Court held that Order XXI, Rule 16 does not apply to a transfer of a part of a decree, but in such circumstances the transferee of the part has

theright of proceeding u/s 146 without the necessity of making an application to the Court for permission to do so. In *Venkatachalam Chetti v.*

Ramaswami Servai (1931) 62 M.L.J. 1 : ILR 55 Mad. 352 , another Full Bench applied the same principle. It was there held that the legal

representative of a deceased decree-holder who had died during the pendency of an execution petition filed by him could be substituted in his

place in the execution petition and be allowed to continue it. These cases render direct support for the appellant's argument.

11. Mr. Viswanatha Sastri has suggested that inasmuch as Order XXI, Rule 16 does not apply, but Section 44-A does, and that that section says

that the decree may be executed in British India as if it had been passed by the District Court, it was incumbent on the Official Receiver to apply to

the District Court for permission to proceed in execution of the decree in the Court of the Subordinate Judge. This contention cannot be accepted

in view of the wording of Section 146 and of the cases to which we have just referred. Undoubtedly the estate of the insolvent plaintiff had

devolved upon the Official Receiver and we hold that he was entitled without any formality to proceed with the execution in the Subordinate Court

to which the District Judge had transferred the execution proceedings.

12. For these reasons the appeal must be allowed and the case remanded to the Subordinate Judge to hear and decide the application for

execution in the light of this judgment.

13. The appellant is entitled to his costs.