

(1911) 01 MAD CK 0052
In the Madras High Court

Thuchakovil Unni Koya

APPELLANT

Vs

Arapayil Pathutti Umma

RESPONDENT

Date of Decision : 20-01-1911

Acts Referred:

Citation : (1912) ILR (Mad) 622 : 9 Ind. Cas. 786

Hon'ble Judges : Ayling, J;Abdur Rahim, J

Bench : Division Bench

Judgement

1. The suit was instituted for recovery of damages on the ground that the defendant who attached in execution of the decree against the plaintiff, a decree for money, which his plaintiff held against a third person, allowed the decree by his negligence or by collusion with the judgment-debtor of the plaintiff to lapse by efflux of time. The defendant has realised the amount of his decree from the properties of the plaintiff. The Subordinate Judge gave a decree to the plaintiff finding the facts in his favour. Sankaran Nair, J. in revision has set aside the judgment of the Subordinate Judge on the ground that the plaintiff, the holder of the attached decree, could have executed the decree in spite of the attachment, and in support of this proposition the learned Judge relies on three cases Patumma v. Idivi Beari 13 M.L.J. 265; Sami Pillai v. Krishnaswamy Chetty 21 MP. 417 and Adhar Chandra Boss v. Lall Mohan Boss 24 CK. 778 : 1 C.W.N. 676. It is contended on behalf of the plaintiff who appeals against his judgment, that Section 273 of the CPC (Act XIV of 1882) expressly lays down that when a decree is attached, execution of it shall be stayed by the Court which passed the decree unless and until the Court which issued the notice of attachment cancel the notice, or the judgment-creditor at whose instance the attachment was made, applies for execution of the decree so attached;

2. We think this contention is well-founded. It is urged on behalf of the respondent that the words "stay the execution" in Section 273 must be understood to mean only the taking of the proceeds of the execution and that the section does not preclude the holder of the attached decree from taking all

the necessary steps for its execution short of actually receiving the amount.

3. We think that such a construction would be entirely artificial. As regards the authorities, it would appear that, so far as the case of *Patumma v. Idivi Beari* 13 M.L.J. 265 is concerned the learned Judges who decided the case did not wish that their decision should be used as a precedent for the general proposition which is now relied upon on behalf of the respondent.

4. In *Adhar Chandra Boss v. Lal Mohan Doss* 24 CP. 778 : 1 C.W.N. 676 there is, no doubt, a general dictum of Maclean, C.J. that attachment of a decree does not prevent the holder of that decree from executing it; but Bannerji, J., does not go so far and he limits his judgment to another ground. Maclean, C.J., if we may say so with respect, does not attempt to show how the words of Section 27.3 are compatible with his construction but proceeds on what appears to us to be general grounds of expediency. The case of *Sami Pillai v. Krishnasamy Chetty* 21 MP. 417 has no relevancy to the present question.

5. If the holder of the attached decree could not execute it, then any application made by him for that purpose would have been infructuous, in the sense that it would not be competent for the Court to grant it, and it would further follow that such an application if made would have been useless to save limitation; see *Munawer Hussain v. Jain Bigai Shankar* 27 AP. 119 : 132 A.W.N. (1905) : 2 A.L.J. 376; *Purna Chandra Mandal v. Rddha Nath Boss* 33 CP. 867 : 4 C.L.J. 141 and *Gurupadepa Basapa v. Virabadrapa* 7 BK. 459

6. We are, therefore, of opinion that the defendant the attaching judgment-creditor was the only person who could have executed the attached decree.

7. The judgment of Sankaran Nair, J. must be reversed and that of the Subordinate Judge restored. Each party will bear the costs of this appeal and before Sankaran Nair, J.