
(1939) 08 MAD CK 0026
In the Madras High Court

Vallabhaneni Parandamayya

APPELLANT

Vs

Kosaraju Surayya

RESPONDENT

Date of Decision : 24-08-1939

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 57

Citation : AIR 1940 Mad 129 : (1939) 50 LW 716 : (1939) 2 MLJ 786

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—The appellant is a judgment-debtor and appeals against an order permitting execution without any fresh attachment, the

learned District Judge having held that an attachment before judgment did not come to an end by the adjudication of the judgment-debtor as an

insolvent which was subsequently annulled. In 1930 a decree was obtained against the appellant and there was an attachment before judgment

which was enforced in an execution petition of 1931. Just before the date to which the sale was posted, the judgment-debtor was adjudged an

insolvent and on this fact being intimated to the executing Court the order passed was ""judgment-debtor is adjudged insolvent, Sale stopped

Dismissed"". The last word is not very clearly decipherable, but I accept the interpretation of the learned District Munsif's handwriting which has

appeared correct to the Courts below. On 16th August, 1934, the adjudication was annulled. On 4th January, 1935, the decree-holder having

died, his legal representative filed a fresh execution petition 76 of 1935 praying for recognition of the applicant as the legal representative of the

decree-holder and for sale of the properties by virtue of a subsisting attachment before judgment. The District Munsif held that there was no

attachment. On appeal the learned District Judge came to the contrary conclusion. To my mind the learned District Judge's decision is correct.

2. My attention has been drawn to three decisions *Gobind Das v. Koran Singh* I.L.R.(1917) 40 All. 197, *Dambar Singh v. Munawar Ali Khan*

I.L.R (1917) 40 All. 86 and *A.V. Balakrishna Menon, Official Receiver Vs. Thirunilai Grama Veeraraghavan Patter's children Rangan Pattar*

(family Manager) and Others, , all of which really do nothing more than point out that the practical effect of an adjudication is to put an end to an

attachment. These decisions do not purport to lay down as a proposition of law that an adjudication automatically raises an attachment so that

there will be no attachment subsisting if and when the adjudication is annulled. An attachment may be raised either by the completion of the sale

with a view to which the attachment has been imposed, or by an express order raising the attachment, or by the operation of Order 21, Rule 57 of

the CPC where-under when an execution petition is dismissed for the decree-holder's default, the attachment shall cease. Now, though the learned

District Munsif on being informed of the insolvency erroneously passed an order dismissing the execution petition which was then pending, instead

of staying the proceedings as he should have done with reference to Section 29 of the Provincial Insolvency Act, it cannot, I think, be said that this

order of dismissal was an order of dismissal for default of the petitioner. Whatever be the legal effect of this dismissal, it will not have the effect of

automatically terminating the attachment as would be the case had it been a dismissal under Order 21, Rule 57. It is true that when there is an

adjudication of the judgment-debtor the attachment will not operate to prevent the Official Receiver from realising the property attached and selling

it for the purpose of satisfying the creditors. Nor will it operate against any transferee from the Official Receiver who acquires an interest in the

process of realisation. But I see no reason why we should read into the Insolvency Act a provision which is not there, to the effect that on

adjudication all attachments shall be raised. There is no reason why an attachment should not notionally continue subject to the superior power of

the Official Receiver to ignore the attachment for the purpose of realising the assets of the judgment-debtor and distributing the proceeds to his

creditors.

3. In a case such as the present when there is an attachment at the time of the adjudication and the insolvency is not prosecuted with the result that

an order of annulment is passed, the effect of the order of annulment will be that which is laid down in Section 37 of the Provincial Insolvency Act.

That is to say, subject to any changes in the title to the property due to the acts of the Court or the receiver, the property will revert to the debtor

to the extent of his right or interest therein on such conditions as the Court may declare. There is nothing in Section 37 to justify the conclusion that

the order of annulment will enlarge the right of the debtor in the property as compared with the right as it subsisted on the date of the adjudication.

To my mind the natural conclusion is that on annulment, subject to the special contingencies contemplated in Section 37, the property will go back

to the debtor with any burdens which existed upon it at the time of the adjudication.

4. I have held that the order of dismissal of the pending execution petition did not automatically raise the attachment. There is no order

subsequently raising the attachment. The order of adjudication to my mind merely makes the attachment ineffective so long as the property is in the

hands of the receiver. When the adjudication is annulled, the property will re-vest in the debtor to the extent to which he had a right therein at the

time of the adjudication. At that time his right was clearly subject to the attachment and I am of opinion that his interest in the property is still bound

by the attachment on the date of the annulment. To hold otherwise would be to allow a fraudulent judgment-debtor to go through the pretence of

insolvency and take advantage of the order of annulment resulting from his own default, to make alienations before the creditor has time to levy a

fresh attachment.

5. In the result therefore the appeal is dismissed with costs. Leave to appeal is refused.