

(1912) 12 MAD CK 0006
In the Madras High Court

Velayutha Muppan represented by his mother next friend
Pichakari

APPELLANT

Vs

P.L.V.A. Subramaniam Chetti

RESPONDENT

Date of Decision : 17-12-1912

Acts Referred:

Citation : (1913) 24 MLJ 70

Hon'ble Judges : Sankaran Nair, J;Sadasiva Aiyar, J

Bench : Full Bench

Judgement

Sankaran Nair, J.—It has been held in Krishnasami v. Engal ILR (1884) M. 20, that a court is not entitled to attach before judgment

property outside its territorial jurisdiction. Mr. Justice Abdur Rahim has expressed a contrary opinion in Veerayya v. Annamalai Chetti ILR (1908)

M. 502. However it is unnecessary to consider whether this latter case was rightly decided, as I see no reason to differ from the judgment in

Ramasumi Naik v. Ramasami Chetti ILR (1907) M. 255, holding that a sale in execution of a decree is not invalid though there was no attachment

before sale. That case follows the rulings reported in Sharoda Moyee Burmonee v. Mooma Moyee Burmonee 8 W.R. 9, and Kishore Mohun Roy

v. Mahomed Mujaffar Hossain ILR (1890) C. 188. The Full Bench decision in Mahadeo Duby v. Bhola Nath Dichit ILR (1882) A. 86, is

dissented from in the Calcutta case decided otherwise. But that court has since decided in Sheodyan v. Bhola Nath ILR (1899) A. 311, that the

Full Bench decision in Mahadeo Duby v. Bhola Nath Dichit ILR (1882) A. 86, is no longer law, as it is inconsistent with the decision of the Privy

Council therein referred to. I therefore hold that the sale is not null and void. The further question is whether the court had power to sell the

property outside the jurisdiction of the court. This Court has decided that though a Munsif should not have entertained a suit for the sale of land

situated within the jurisdiction of another Munsif, a decree passed without objection is binding on the judgment-debtor if he was competent as

regards the value and nature of the suit to exercise jurisdiction and the learned judges held that it was not open to the judgment-debtor to object to

the validity of the decree in execution; Gomatham Alamalu v. Komandur Krishnamacharlu ILR (1903) M. 118. I am not prepared to differ from

this judgment. It follows from this that even if the judgment-debtor could have successfully objected to the sale of the property before sale and

confirmation it is not open to him to do so after he has allowed the sale to take place without objection and sale certificate has issued. I must

therefore disallow this objection.

2. The other objections taken relate to findings of fact. I would dismiss the second appeal with costs.

Sadasiva Aiyar, J.

3. I concur in the judgment just now pronounced. I am not sure that Gomatham Alamalu v. Komandur Krishnamacharlu ILR (1903) M. 118, does

not go too far in conferring jurisdiction on a court to pass a decree for sale of Immovable property outside its jurisdiction provided the nature of the

suit and the pecuniary jurisdiction over the claim are within the ordinary jurisdiction of the court. But that decision was passed so long ago as 1903,

and provided that the effect of such a decree is confined as in that case to preventing the judgment-debtor from taking any objection as to the

validity of the decree after it had become final between the parties, I do not think that it requires re consideration by a Full Bench after this lapse of

time. If the judgment-debtor could not object to a decree for sale, he cannot also object to an execution sale of properties outside jurisdiction after

it has taken place without objection. Persons who get or have got sham conveyances from the judgment-debtor intended neither to vest title nor

juridical possession in the vendees cannot also object and the appellant in this case is such a fictitious vendee. The Appeal must therefore be

dismissed with costs.