

(1957) 10 MAD CK 0017
In the Madras High Court

Venkatachalam Chettiar

APPELLANT

Vs

Umayal Achi and Others

RESPONDENT

Date of Decision : 16-10-1957

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 17, 48, 52

Citation : AIR 1958 Mad 395 : (1958) 71 LW 126 : (1958) 2 MLJ 26

Hon'ble Judges : Ganapatia Pillai, J

Bench : Single Bench

Judgement

Ganapatia Pillai, J.—The appellant before me is the first defendant in the suit in which the first respondent had obtained a decree for money against the assets of the deceased, father of the first defendant. After several execution petitions had proved unsuccessful E.P. No. 85 of 1952 was instituted by the first respondent on the eve of expiry of the twelve year period of limitation against the appellant and other persons who were impleaded as garnishees. The reliefs claimed in the execution petition fell under two categories. The first related to the attachment and sale of certain moveable properties on the footing that they belonged to the deceased debtor, namely, the father of the first defendant. The second category of relief related to a prohibitory order in respect of certain debts belonging to the deceased debtor in the hands of certain persons who were impleaded as parties to the execution petition. In the course of the counter statements filed by the appellant and also by the garnishees it was disclosed that a certain sum out of four thousand dollars belonging to the deceased which was in the hands of one of the garnishees had been collected by the appellant and an enquiry was made into this matter by the predecessor of the learned Judge who passed the order under appeal in which he found that on his own admission the appellant had collected a sum of 1,240 dollars which was deposited standing in the name of his deceased father. This order of the prior Subordinate Judge of Devakottah, dated 15th April, 1954, indicated that the appellant had not accounted for this sum and was therefore liable to be proceeded against personally to the extent of this amount. He did not however pass any order directing the appellant to deposit the

equivalent to this amount into Court to satisfy the decree of the first respondent though he indicated that the decree-holder was free to proceed personally against the first defendant u/s 52, CPC for recovery of the sum which the first defendant had admitted he had received from the foreign firm. By this order the learned Subordinate Judge directed the attachment of Items 2 and 4 in the list of moveable properties appended to the execution petition. Subsequent to this order an application E.A. No. 391 of 1955 was made to a successor of" this Judge to amend the execution petition by the inclusion of a prayer for the arrest of the first defendant for the realisation of the sum of money indicated in the order of the learned Subordinate Judge, dated 15th April, 1954. This amendment was allowed by the order of the lower Court, dated 8th February, 1956. Against that order this appeal is preferred.

2. The learned Subordinate Judge in the Court below relied on Rule 17 of Order 21, Civil Procedure Code, to get over the plea of limitation raised by the present appellant in the lower Court. Obviously that is wrong because the amendment contemplated in Rule 17 of Order 21, Civil Procedure Code, is not of the character now in question. It is well-settled that when execution is sought against a particular property in an execution petition filed on the eve of the 12 year period of limitation no amendment of the execution petition could be allowed after the expiry of the 12 year period by permitting the decree-holder to introduce a new property from out of which the decree is sought to be satisfied. A number of authorities were cited by learned Counsel for the appellant in support of this proposition. But it is enough to mention the decisions in Bhanpal Singh v. Siva Ram AIR 1942 All. 442 and Gajanand Sha v. Dayanand Thakur AIR 1942 Pat. 127. All the decisions cited by learned Counsel for the appellant deal with cases where the judgment-debtor is ex facie personally liable to satisfy the decree. The facts of the instant case are different. There was no personal liability cast upon the appellant by the decree to satisfy the amount mentioned in the decree in this case. His liability was that of a legal representative who was bound to satisfy the decree only if he had assets of his deceased ancestor. In such a case no decree-holder can straightaway ask for the relief of arrest of the legal representative judgment-debtor unless he establishes beforehand that the assets of the deceased debtor received by the legal representatives have not been properly accounted for. Of course it would be open in an execution petition against the legal representative to anticipate such an enquiry by the Court and to ask for arrest of the legal representative. But the true position would be that the order of the Court fixing the personal liability of the legal representative is the order, which gives the right to demand payment of the money personally against the first defendant--in this case the appellant. The order of the Subordinate Judge of Devokattah, dated 15th April, 1954, must therefore be construed as the order which gave the right to execute the decree personally against the first defendant (appellant before me) in which case the application for amendment of the execution petition was well within time and was not barred by Section 48, Civil Procedure Code. Even otherwise I am not prepared to hold that the

amendment in this case is hit by Section 48 , Civil Procedure Code, because in paragraph 6 of the affidavit filed by the decree-holder at the time when he presented the execution petition within the period of limitation, the decree-holder has stated that defendants 1 and 2 had received various amounts belonging to their deceased father from the garnishees and that therefore they were liable to render proper accounts relating to these amounts and in case they failed to do so the decree-holder was entitled to get a personal decree against them and execute it. This allegation contemplates the position which eventually materialised as a result of the enquiry held by the predecessor of the learned Subordinate Judge who passed the order now under appeal.

3. It follows that relief No. 2 prayed for in the execution petition, namely, the realisation of the decree amount from out of the debts due to the deceased debtor in the hands of the garnishees involved a personal decree against defendant 1 in case the decree-holder was able to satisfy the Court that those assets had been already realised by defendant 1 and were not properly accounted for. In that sense the relief of arrest of the appellant which was subsequently asked for really flows out of the relief for recovery of the decree amount from out of the assets of the deceased debtor indicated under the category of debts due to the deceased debtor. In this view I do not agree that the amendment of the execution petition allowed by the lower Court introduces either a new fund from which the decree-holder expects to realise his money or a new form of relief, namely, arrest which was not contemplated at the time when the execution petition was put into Court.

4. The amendment allowed by the lower Court is therefore proper and cannot be objected to as offending Section 48, Civil Procedure Code. The appeal is dismissed with costs