
(1914) 09 MAD CK 0033
In the Madras High Court

V.E.N.K.R.M.V.R.M. Somasundaram Chetty

APPELLANT

Vs

Tirunarayana Pillai

RESPONDENT

Date of Decision : 01-09-1914

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 73(2)

Citation : AIR 1915 Mad 547 : 25 Ind. Cas. 592

Hon'ble Judges : Spencer, J; Seshagiri Aiyar, J

Bench : Division Bench

Judgement

1. The petitioner in this case applied for rateable distribution. It was objected to on the ground that the decree obtained by the petitioner was not against the same judgment-debtor against whom, execution had been levied by the counter-petitioner and the assets realised. The Subordinate Judge upheld this contention and dismissed the application. This revision petition is against that order.

2. A preliminary objection was taken before us that we should not interfere as u/s 73, Clause (2), of the Code of Civil Procedure, the petitioner had his remedy by a regular suit.

3. Mr. K. Srinivasa Aiyangar argued that the Court had jurisdiction, as was decided in a number of cases, and that the present case was a fit one for our interference. We feel no doubt that the High Court has jurisdiction to hear the petition. See Tiruchittambala Chetti v. Seshayyengar 4 M. 388; Viraraghava v. Parasurama 15 M. 372 and Sri Krishna Doss v. Chandook Chand 4 Ind. Cas. 509 : 32 Ma. 334 : 5 M.L.T. 125 : 19 M.L.J. 307. But" we do not think that in the exercise of our powers we should interfere in this particular instance. In the first place we are not satisfied that the Subordinate Judge has either refused to exercise jurisdiction or exercised it with material irregularity as contended for by Mr. Srinivasa Aiyangar. In order to construe the decree in Original Suit No. 169 of 1910 obtained by the petitioner against Chidambaram Chetti, the Subordinate Judge held that it was open to him to examine the records of the suit to ascertain its real scope. It is true that the language used by him seems to indicate that he

thought that the personal decree against Chidambaram Chetti was wrongly passed, but on carefully examining the judgment we have come to the conclusion that what the Subordinate Judge meant to say was that if the decree were properly construed it would amount only to a decree against the assets in the hands of Chidambaram Chetti. We do not think that in thus construing the decree he exercised his jurisdiction illegally or with material irregularity. In this connection we may refer to the observations of Sir Lawrence Jenkins, the learned Chief Justice of the Calcutta High Court, in *Sheo Prosad Bungshidur v. Ram Chunder Haribux* 23 Ind. Cas. 977 : 41 C. 328 where his Lordship points out that, where there has been an error of law and not of procedure, it is not open to the High Court to interfere in revision. A similar view was expressed in *Subramanya Chettiar v. Arunachellam Chettiar* 16 Ind. Cas. 692 : (1912) M.W.N. 956 by a single Judge of this Court. Acting on this view we must hold there is no ground for setting aside the Subordinate Judge's order. There is also another reason why we should not interfere in revision. As we observed at the outset, the petitioner has his remedy by regular suit. In the revision petition before us, he has impleaded as respondent only the person who opposed his application. It has been admitted that moneys have been paid out to a large number of other creditors after the dismissal of the petitioner's applications. Any adjudication regarding the rights of the petitioner in the absence of the various persons to whom moneys have been paid out must be unsatisfactory. If we interfere in revision, the result will be that persons who are not parties to this petition must be called upon to pay back the money paid over to them, thus concluding them by an order passed behind their back. On the other hand if the petitioner institutes a regular suit, he can implead all the persons to whom money has been paid as parties to that suit and can obtain his relief in their presence. They will then have opportunities to resist petitioner's claim not only on the specific objection raised by the respondent now, but will be entitled to put forward other objections which they may be advised to take. Without laying down as a general proposition of law that in all cases where there is a remedy by way of suit the High Court should not interfere in revision, we are prepared to say that where a more efficacious remedy can be had by regular suit and where the result of interference by the High Court will affect the rights of parties not-before the Court eo nomine, the High Court, will not be justified in interfering in revision. This view has been adopted by individual Judges in this High Court in a number of unreported cases. Vide Civil Revision Petition No. 93 of 1911, Civil Revision Petition No. 1 of 1913 and Civil Revision Petition No. 984 of 1912. We dismiss the petition with costs.