
(1933) 02 MAD CK 0023
In the Madras High Court

V.G. Nataraja Mudaliar

APPELLANT

Vs

Official Assignee of Madras

RESPONDENT

Date of Decision : 02-02-1933

Acts Referred:

Citation : AIR 1933 Mad 438 : (1933) 38 LW 766 : (1933) 64 MLJ 692

Hon'ble Judges : Pakenham Walsh, J

Bench : Division Bench

Judgement

Pakenham Walsh, J.—The question in this case is whether the execution petition which was filed on 24th June, 1927, is barred by limitation.

The previous application was on 23rd February, 1924. To save limitation the decree-holder relies upon the batta paid on 2nd July, 1924, for the

auction sale of the property. The question is whether the payment of batta is a step-in-aid of execution. Both the Courts have held in favour of the

decree-holder and against that decision this second appeal is filed.

2. The following is an extract of the batta memo:-Further memo filed on behalf of the plaintiff.

Particulars of the Against Residence Batta. Remarks.

Process whom.

Rs. A. P.

Sale warrant. Immovable Dt. Munsif's

Property, Court, 1 0 0

Vellore.

3. There appear to have been four cases in this High Court as regards payment of batta saving limitation. The first is the Bench case in

Vijiaraghavalu Naidu v. Srinivasalu Naidu ILR (1905) Mad. 399, where it was held that a step-in-aid had been taken. The second is, A.L.A.R.

Arunachalam Chettiar, through his Authorised Agent, Pichappa Chettiar Vs. Latchumanan Chettiar and Others, , where Wallace, J., held that the

payment of process fee for the issue of a warrant of arrest in execution of a decree where the batta memo itself does not apply for the issue of

process is not a step-in-aid of execution so as to save limitation. As observed by Jackson, J., in Raman Chetty v. Ramaswami Pillai ` (the third

case) the actual paper is not quoted in the judgment nor was it around in the record. In A.L.A.R. Arunachalam Chettiar, through his Authorised

Agent, Pichappa Chettiar Vs. Latchumanan Chettiar and Others, Wallace, J., relied on Vijiaraghavalu Naidu v. Srinivasalu Naidu (1905) ILR 28

Mad. 399 as indicating the then view of this Court that a mere payment of batta for process where the batta memo itself does not apply for the

issue of process will not be a step-in-aid. In that case, Vijiaraghavalu Naidu v. Srinivasalu Naidu ILR (1905) Mad. 399, a batta memorandum was

held to be a step-in-aid and the judgment says that it asked that process may issue and for this purpose the necessary batta was deposited.

Jackson, J., says in Raman Chetty v. Ramaswami Pillai (1928) 56 M.L.J. 64 that he does not think it can be gathered from that judgment that it

was a distinct application for process over and above what was in the form. In Govindaswami Pillai Vs. Govinda Padayachi, Madhavan Nair, J.,

held that the ""process application"" for which batta was paid ""to attach the properties in the house of the defendants"" and which stated ""that one

rupee might be received for the purpose,"" was a step-in-aid. Thus there are one Bench case and three single Judge decisions. Of these

Govindaswami Pillai Vs. Govinda Padayachi, , where attachment was distinctly asked for, is not of much help. Of the other two decisions by single

Judges both consider themselves in agreement with the Bench case, Vijiaraghavalu Naidu v. Srinivasalu Naidu ILR (1905) Mad. 399. But as

observed in Raman Chetty v. Ramaswami Pillaiz by Jackson, J., in A.L.A.R.

Arunachalam Chettiar, through his Authorised Agent, Pichappa

Chettiar Vs. Latchumanan Chettiar and Others, the actual words in the batta memorandum are not set out. Jackson, J., says that

it is difficult to apply rulings which contain no citation of the document in question. In fact for that reason alone I should be prepared to ignore the case-law and trust to the plain interpretation of the statute.

4. He continues:

I had thought of referring the matter to a Bench, but on a consideration of the cases I hold that *Vijiaraghavalu Naidu v. Srinivasalu Naidu* ILR

(1905) Mad. 399 is clear authority (cf. *Alagamuthu Pillai v. Devasagaya Fernandez* (1915) 3 L.W. 34 which is not cited in A.L.A.R. *Arunachalam*

Chettiar, through his Authorised Agent, Pichappa *Chettiar Vs. Latchumanan Chettiar and Others*, .

5. I cannot help thinking that the brackets in the report are misplaced because *Vijiaraghavalii Naidu v. Srinivasulu Naidu* ILR (1905) Mad. 399, is

referred to twice in A.L.A.R. *Arunachalam Chettiar*, through his Authorised Agent, Pichappa *Chettiar Vs. Latchumanan Chettiar and Others*, and

in fact in the previous paragraph, Jackson, J., says that the learned Judge in that case considered *Vijiaraghavalii Naidu v. Srinivasalu Naidu* ILR

(1905) Mad. 399 *Alagamuthu Pillai v. Devasagaya Fernandez* (1915) 3 L.W. 34, which is not cited in A.L.A.R. *Arunachalam Chettiar*, through

his Authorised Agent, Pichappa *Chettiar Vs. Latchumanan Chettiar and Others*, , is such a clear case as not to be of much help. In the present

case the Court passed an order on 31st January, 1924, that the properties should be sold on 7th July, 1924, and on 2nd July, 1924, the process

fee was paid for issue of a sale warrant. Under Rule 187 of the Civil Rules of Practice the batta for the sale warrant has to be paid a week before

and a warrant cannot be prepared till the batta is paid. If the batta is not paid the Execution Petition is liable to be dismissed. It seems to me that

the entry ""Sale warrant"" under ""Particulars of process"" and ""Immovable property"" under ""Against whom"" is sufficient to indicate that the Court was

asked to issue a sale warrant the batta being paid for it. I therefore agree with the view of both the Lower Courts that this is a step-in-aid of

execution. The second appeal fails and is dismissed with costs.