
(1950) 08 MAD CK 0018

In the Madras High Court

Case No : A.A.A.O. No. 103 of 1948 and C.R.P. No. 354 of 1948

Vurakarnam Lakshmi Narasimham

APPELLANT

Vs

Golanki Venkayya and Others

RESPONDENT

Date of Decision : 08-08-1950

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 11, Order 6 Rule 17, 115
Limitation Act, 1908 — Article 181, 182

Citation : AIR 1951 Mad 668 : (1950) 2 MLJ 670

Hon'ble Judges : Raghava Rao, J

Bench : Single Bench

Advocate : G. Balaperamaswami Rao, for the Appellant; N. Bapiraju, for the Respondent

Judgement

Raghava Rao, J.—There are two connected cases before me, a civil revn petn & a civil miscellaneous second appeal with a memo of

objections in the latter. They arise out of E. P. No. 62 of 1944 in O. S. No. 28 of 1934 on the file of the Dist Munsif of Eluru. The E. P. was held

to be out of time by the learned Dist Munsif, but has been held on appeal to be in time . No question arises in regard to that on the facts & the

dates which are not in controversy between the parties, & I need only say that I uphold the view of the lower appellate Ct. in this respect.

2. Having held the E. P. in time the lower appellate Ct said in regard to a certain attachment before judgment in the case that although the decree-

holder did not make a prayer for a sale in pursuance of that attachment in-his original petn, the learned Dist Munsif should allow him to amend the

petn by praying for it. The decree was passed on 19-9-1934. The attachment before judgment referred to above had already been effected on

24-1-1934. The E. P. with which we are concerned was filed on 17-2-1944 & has been held to be in time on account of certain proceedings in

insolvency which eventually resulted in an annulment of the adjudication of the debtor & of certain proceedings for amendment of the decree by

way of a scaling down of the debt, which had all intervened between the date of the decree & the date of the E. P. The question of limitation

decided by the lower appellate Ct in favour of the decree-holder is, as I have already said, no longer a matter for consideration here. The propriety

& legality of the direction of the learned Dist J. in appeal-to the learned"" Dist Munsif to allow the decree-holder an amendment of his execution

petn. by the insertion of a prayer for a sale in pursuance of the attachment is the only matter which has been the subject of a fairly long & able

argument of both sides in this case before me & which calls for determination by me.

3. It is contended for the judgment-debtors that there was no execution petn filed in this case within three years of the decree & that consequently

the attachment before judgment lapsed & could not be availed of by the decree-holder, though the execution petn itself filed by him in 1944 might

be regarded as in time. Mr. Bapiraju says that this is the true legal position emerging from the decision of a Sahul Hameed Rowther Vs. P.R.S.A.

Arunachalam Pillai and Another, . if so, the learned Dist J. had no jurisdiction,-- and that is the next contention--to direct the learned Dist Munsif to

allow an amendment of the execution petn in the manner mentioned above. Learned counsel says that a prayer for execution by way of fresh

attachment ought to have been made in the E. P. & that an amendment of the E. P. in the manner directed by the learned Dist J. more than 12

years after the passing of the decree would be illegal. He relies in support of his contention upon a ruling reported in "Veeran Kutty v. Veethil

Appu", 1911-1 MWN 181: 9 IC 760. There is execution of a decree for money the decree-holder applied to proclaim & sell certain properties

without having attached them. The Dist Munsif dismissed the appln while the Sub-Judge on appeal allowed the petnr to amend the petn by inserting

a prayer for attachment also. When the Subordinate Judge's order was passed, the decree had become barred by limitation. It was held by the

learned Judges (Abdur Rahim & Ayling, JJ), relying upon the well-known principle of procedure laid down by Lord Esher M. R. in Weldon v.

Neal", (1887) 19 QBD 394 viz., that as a general rule amendments ought not to be allowed when they would prejudice the rights of the other

parties as existing at the date of such amendment--that the Subordinate Judge had acted wrongly in ordering the amendment in question.

4. To take up the first contention of Mr. Bapiraju that with the lapse of three years from the date of the decree without any execution petn being

filed within that period the attachment before the judgment became altogether dead. I have after careful consideration come to the conclusion that it

is well-founded. Learned counsel relies upon what is ruled by the judgment of the F. B. delivered by Sahul Hameed Rowther Vs. P.R.S.A.

Arunachalam Pillai and Another, of the Report. There after referring to Ramanandhan Chettiar Vs. Veerappa Chettiar and Others, decided by

Pandrang Row, J. on the basis of an earlier P. B. decision of this Ct reported in Meyyappa Chettiar Vs. Chidambaram Chettiar, the learned Chief

Justice observes with reference to certain observations of that learned Judge as follows:

It is said that here Pandrang Row, J. was laying down the proposition that an intention to execute is all that is necessary to keep an attachment

before judgment alive. It matters not whether the decree-holder applies for execution provided that an intention to do so is to be gathered from

what has happened in other proceedings. In this connection the learned Advocate for the applt. points to the fact that the first resp. had opposed

the second resp.'s appln. to have the decree in O. S. No. 95 of 1932 set off by way of part satisfaction of the decree in O. S. No. 11 of 1931.

If the opinion expressed by Pandrang Row, J. is correct in law, resp 1's action would probably have been sufficient for the applt, taut we are

unable to accept what the learned Judge said in Ramanandhan Chettiar Vs. Veerappa Chettiar and Others, as correctly expressing the law.

Whether an attachment before judgment continues indefinitely after judgment cannot depend on what has happened in other proceedings. For

continuance beyond three years from the date of the decree an appln for execution must be filed within that period, otherwise the decree-holder

loses his remedy.

5. I consider the ruling of the F. B. to be categorically clear & perfectly decisive of the point in favour of the contention of Mr. Bapiraju. Mr.

Balaparameswari Rao on the other side urges that F. B. case is distinguishable from the present case on the ground that here, unlike there, there

was an amendment of the decree in the scaling down proceedings which gave his client a fresh start of limitation for the execution from its date. The

distinction, in my opinion, does not affect the legal position now under discussion. It has a bearing only on the question whether the E. P. itself

should or should not be regarded as in time.

6. The further contention of Mr. Bapiraju founded upon "Veeran Kutty v. Veethil Appu", (1911) 1 MWN 181: 9 IC 760 already referred to has

given me greater trouble. On the one hand I was feeling obsessed by the observation of Lord Esher M. R. in "Weldon v. Neal", (1887) 19 QBD

394 that

Under very peculiar circumstances the Ct might perhaps have power to allow such an amendment but certainly as a general rule it will not do so"".

On the other hand I was wondering whether the discretion exercised by the lower Ct by way of allowing the amendment in the present case should

be interfered with by me sitting in revision. It seems to me on close reflection that possibly the pleader who filed the E. P. did not have, in framing it

as he did, a sufficiently clear & accurate appreciation of the legal position with reference to the subsistence or cessation of the attachment before

judgment after the lapse of three years from the date of the decree without any execution petn being filed by the decree-holder within that period.

In fact at the time that he filed the E. P. the F. B. ruling in Sahul Hameed Rowther Vs. P.R.S.A. Arunachalam Pillai and Another, had not come

into being. The F. B. ruling was of 4-4-1944 while the E. P. was of 17-2-1944. On the latter date the authority of Ramanandhan Chettiar Vs.

Veerappa Chettiar and Others, was intact, & the pleader who filed the E. P. was entitled to assume & presumably did assume that no prayer for

fresh attachment was necessary, because the attachment before judgment had not, according to that authority, lapsed by that time.

7. I am on the whole not prepared in these circumstances to interfere either in C. R. P. No. 354 of 1948 & the memo of objections in C. M. S. A.

No. 103 of 1948 questioning the propriety of the amendment allowed by the lower appellate Ct or in C. M. S. A. No. 103 of 1948 itself,

maintaining that the attachment before judgment never lapsed; with the result

that all of them shall stand dismissed with no order as to costs in any of them. (No leave).