

(1938) 08 MAD CK 0037

Madras High Court

Case No: None

Kailasa Padayachi

APPELLANT

Vs

Duraiappa Kachirayar
and Another

RESPONDENT

Date of Decision: Aug. 5, 1938

Citation: AIR 1939 Mad 163 : (1938) 48 LW 916 : (1938) 2 MLJ 936

Hon'ble Judges: Varadachariar, J

Bench: Division Bench

Judgement

Varadachariar, J.

The Court below has written a long order in this matter but I have found it very difficult to understand its reasoning; it seems to me waste of time to criticize the judgment. Far from a desire to decide the substance of the dispute between the parties, the order of the Court below only exhibits an anxiety to discuss points of law and an equal anxiety to go wrong on them.

2. The Revision Petition has been filed against an order of the learned District Munsiff passed in the following circumstances.

3. A decree-holder was alleged to have received the decree-amount, but it returned" out that even before the date of this alleged payment a third party had obtained an order for attachment of that decree. So far as one can gather from the dates available in the record, the payment is said to have been made before the original judgment-debtor was served with a prohibitory order. It was contended by the attaching decree-holder that there had in fact been no payment and at one stage of the proceeding the decree-holder also swore that the payment was not true, though a receipt purporting to have been given by him was produced by the judgment-debtor and its genuineness was admitted by the decree-holder. As the merits of the case have not been gone into, I do not wish to say more on this aspect of the matter at this stage.

4. Within 30 days of the alleged payment, the decree-holder himself applied to record satisfaction. But as it appeared from the record that the decree had been attached by a third party, notice of the application was given to the attaching decree-holder. In the ordinary course when the decree-holder applied to enter up satisfaction, no notice or enquiry would have been necessary and it is meaningless to insist that notwithstanding the application by the decree-holder to enter up satisfaction, the judgment-debtor must have taken the precaution of filing another petition for the same purpose within the period allowed by the law. It was only when the attaching decree-holder raised objection and an enquiry was held in that connection that the decree-holder thought fit to deny the payment. Till then the judgment-debtor was certainly not called upon to file any application to enter up satisfaction because the decree-holder had already applied to do so. What happened during the course of this enquiry does not seem to do much credit to any of the parties concerned. Having denied the payment, though he had given a receipt, the decree-holder absented himself and his vakil reported no instructions. The District Munsiff accordingly purported to strike off the decree-holder's petition - a course which is certainly opposed to the judgment of this Court in *Somu Pathar v. Rangaswami Reddiar* (1918) 35 M.L.J. 253. The then District Munsiff seems to have thought that this would not prejudice the judgment-debtor and he contented himself with adding a reservation at the end of his order to the following effect:

The defendants' right to claim full satisfaction in proper proceedings is reserved.

5. I do not for a moment suggest that if otherwise the defendants' right had been lost, a mere reservation in the above terms would save it or preserve it. But it undoubtedly furnishes an answer to an argument relied on in one_ of the orders now complained of, that the defendants' vakil who was present in Court when this order was passed should have got up and insisted on going on with the enquiry. It was not the privilege of the Munsiff alone to make a mistake; the vakil also was entitled to assume that the defendants' rights would not be prejudiced. And what is more curious in this case is that for one purpose the District Munsiff proceeds on the footing that the judgment-debtor was not a party to this order but nevertheless in another connection he lays hold of the fact that the gentleman who was supposed to be his vakil in some other proceeding happened to be sitting in Court when this order was passed.

6. Acting on the strength of the reservation above referred to, the judgment-debtor applied for satisfaction being recorded. He was then met with the plea that his application was too late and that plea was upheld. It is against this order that this Civil Revision Petition has been filed.

7. Prima facie the second application is out of time and I agree with the lower Court that it is not saved either by Section 5 or Section 14 of the Limitation Act. The lower Court was therefore right in dismissing it if it is to be treated as an independent application. But I do not think it was really necessary or proper to treat it as an independent application. It has so often been laid down that an order which merely strikes off a particular application

cannot always be regarded as finally disposing of that matter. The judgment-debtor is interested more than the decree-holder in an application to enter up satisfaction. The mere fact that the decree-holder who has filed the application absents himself is certainly no justification for striking off the application. The proper thing therefore for the District Munsiff to have done was to have proceeded with the original application itself, treating the later application of the judgment-debtor only as an application to continue the former proceeding. At any rate when the judgment-debtor took the precaution of filing a second application inviting the District Munsiff to do so, the least that the lower Court should have done was to have adopted that course. The grounds on which these applications have been dismissed are wholly untenable. I accordingly set aside both the orders of the lower Court and direct it to proceed with the application dated 27th November, 1935, treating the order of 23rd April, 1936, passed on that application as not amounting to a valid or final disposal of that petition. Notice will now be given by the lower Court to the attaching decree-holder as well as the judgment-debtor and all parties will be given the opportunity of leading evidence and putting forward their contentions on the merits.

8. It is only the attaching decree-holder that is represented before me by Counsel. If the mistake had merely been that of the lower Court in dealing with the application dated 27th November, 1935, I should not have thought fit to saddle the attaching decree-holder with the costs of this revision petition. But I find that he has taken up and persisted in the untenable position which the lower Court has upheld in the orders now set aside. The petitioner will be entitled to recover his costs of this petition from both the respondents.