

Parthasarathy Appa Row Vs. Rangiah Appa Row and anr.

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Court : Chennai

Decided On : Aug-20-1903

Reported in : (1903)13MLJ501

Appellant : Parthasarathy Appa Row

Respondent : Rangiah Appa Row and anr.

Judgement :

Charles Arnold White, C.J.

1. This is an appeal against an order of the District Court of Godavari directing the payment out of Court of one-third of certain moneys standing to the credit of Original Suit No. 35 of 1895 in the Subordinate Judge's Court of Masulipatam on security being furnished. The material facts and dates with reference to the circumstances in which the application was made are as follows:

In 1895 the Medur Renee instituted Original Suit No. 34 of 1895 in the Masulipatam Court to recover possession of the Medur Estate. One Papamma Row and the Court of Wards were made defendants to that suit. For the purposes of to-day it will be sufficient to say generally that Papamma Row alleged that she had validly adopted Narayya Appa Row, the son of the Medur Ranee. The boy died during the life-time of the Medur Ranee and of Papamma Row. The Medur Ranee claimed the Medur property on the ground of her rights as natural mother, whilst Papamma Row claimed it on the ground of her rights as adoptive mother of

the deceased boy. At the time of the institution of the suit the Court of Wards were in possession of the estate on behalf of the boy. In that suit an application was made by the Court of Wards for the appointment of a Receiver. The matter came before the High Court on appeal and on July 29th, 1898 an order for payment into Court was made by the High Court. By that order Papamma Row (the 1st defendant) was appointed Receiver in place of the then Receiver and the latter was ordered to deposit in the Bank of Madras at Cocanada all the jewels and securities in his possession and to pay into the Bank any balance of cash that might remain after payment of all legal charges, the momey to be interested and to stand to the credit of Original Suit No. 35 of 1895. In pursuance of this order the money, in round figures some ten lakhs of rupees, was paid into Court to the credit of Original Suit No. 35 of 1895 in the Masulipatam Court, As a matter of fact, for purposes of convenience the money was deposited in the local branch of the Madras Bank. In March 1899 the Medur Raneer died and the two respondents to the appeal now before this Court were brought on the record as the 2nd and 3rd plaintiffs in Original Suit No. 35 of 1895. This suit was heard and on December 2nd 1899 it was dismissed. The plaintiffs appealed to this Court and their appeal is now pending. Two days after the dismissal of the suit, Papamma Row died and the present appellant, as the representative of Papamma Row was made a respondent to the appeal by the plaintiffs in Original Suit No. 35 of 1895. His case is that he stands in the same degree of relationship with the common ancestor as the 2nd and 3rd plaintiffs in Original Suit No. 35 of 1895 and that he is entitled to the estate jointly with them. On December 14th, 1899 the present appellant instituted Original Suit No. 44 of 1899 in the District Court of Godavari against the two plaintiffs in Original Suit No. 35 of 1895. In this suit he claimed partition of the Medur Estate and also of another estate know as the Nidadavole Estate. Papamma Row had derived her right to this estate through her husband. The present appellant's case with regard to the Nidadavole Estate also is that he stands in the same degree of relationship with the common ancestor as the two defendants to the suit (2nd and 3rd plaintiffs in Original Suit No. 35 of 1895 and the present respondents) and that he is entitled to this estate jointly with them. The case of the 1st of the present respondents as regards the Nidadavole Estate is that he is entitled to the whole of that estate by right of primogeniture.

2. On January 26th 1900 a Receiver was appointed in Original Suit No. 44 of 1899 for the Nidadavole and Medur Estates and for the moveables appertaining to the Nidadavole Estate pending the disposal of that suit. The order appointing the Receiver did not purport in any way to deal with the money deposited in the Bank of Madras to the credit of Original Suit No. 35 of 1895 in the Sub Court of Masulipatam.

3. On January 9th 1901 an application by the present 1st respondent of a similar character to that on which the order was made which is now before this Court was dismissed and the order dismissing this application was affirmed by the High Court. The progress of the litigation has been delayed by reason of the passing of the Impartible Estates Act but as things stand at present the appeal in Original Suit No. 35 of 1895 will shortly be heard by this Court while there seems no reason to doubt that Original Suit No. 44 of 1899 will be disposed of by the District Court of Godavan in the course of the next few weeks.

4. On August 8th 1902, the 1st defendant in Original Suit No. 44 of 1899 (the 1st respondent now before this Courts made the application with which we are now concerned. The application was made to the District Court of Godavari in Original Suit No. 44 of 1899 and it asked that Court to order payment to petitioner of one-third of the cash balance to the credit of the the Medur Estate and also to direct the Receiver to pay to the petitioner one-third of the cash balance to the credit of the Medur and Nidadavole Estates, The District Judge declined to make any order on the 2nd prayer of the petition on the ground that there were practically no funds in the Receiver's hands out of which payment could be made. But he ordered the payment out of one-third of the money in Court subject to security being furnished. The 1st defendant in the suit in which the application was made (Original Suit No. 44 of 1899) did not appeal against so much of the order of the District Judge as declined to order the payment out of moneys in hands of the Receiver appointed in that suit. The moneys which the District Judge ordered to be paid out of Court were moneys which had been paid into the Masulipatam Court to the credit of the Masulipatam suit under the order of the High Court, dated July 29th, 1898. I am of opinion that the District Judge had no jurisdiction to make this order. It is no doubt true that the plaintiff in Original Suit No. 44 of 1899 (the present appellant) is at the

most, according to his own case only entitled to one-third of the properties in question, that it is part of his case that the present 1st respondent is entitled to one-third of the properties and that the parties to the two suits are the same. But this state of things does not give jurisdiction to the Godavari Court to deal with moneys which had been paid into another Court of co-ordinate jurisdiction, in another suit under the orders of the High Court, The District Judge was of opinion that Section 502 of the, Civil Procedure Code applied since the money was held on behalf of the parties to the two suits

5. The section runs as follows:

When the subject-matter of a suit is money or some other thing capable of delivery, and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last named party with or without security, subject to the further direction of the Court.

6. On the true construction of the section it seems to me that it only applies when the party making the admission holds the property or other thing which the party in whose favour the order is made seeks to have delivered to him. But even adopting the constriction for which Mr. Krishnaswami Aiyar contended and assuming that the section was intended to apply to a case where the property is not held by the party making the admission, the section, in my opinion, would not cover a case where the money was held by another Court to the credit of another suit. The District Judge in paragraph 18 of his order directed that this one third share could be attached and Mr. Krishnaswami Aiyar, so far as I could follow his argument upon the point sought to support the order on the ground that the one-third share could be regarded as 'attached' within the provisions of Section 272 Civil Procedure Code. In the first place the order is not, and does not, purport to be an order of attachment. There could be no attachment in Original Suit No. 44 of 1899 for the reason that there is, as yet no decree in the suit. In the second place the section merely provides a special method of attachment in a case in which the Court ordering the attachment has jurisdiction to make the order. The words "subject to the further orders of the Court from which the notice issues"

presuppose that it is competent for the Court to make the further orders referred to in the section. In my opinion it was not competent for the Godavari Court to make any order with reference to the moneys in the Sub-Court of Masulipatam standing to the credit of the Masulipatam suit. Where property is the subject of legal proceedings there is no doubt jurisdiction in certain circumstances to allow the payment of the income of the property to parties interested. In England this jurisdiction is recognized in R.S.C. Order 50 Rule 9, which reproduces the provisions of the old Chancery Procedure Act. I feel no doubt that at any rate a High Court in this country has jurisdiction to make an order pendente lite for the payment of moneys in the hands of Receiver to one of parties to a suit. For a case in which this jurisdiction was exercised, see *Motivahu v. Premivahu* I.L.R. 16 B. 511. In the present case if a proper application were made in the proper Court an effective order as to the disposition of the fund in Court could be made. I am of opinion that there was no jurisdiction in the Godavari Court to make the order complained of, and I think it should be set aside.

Boddam, J.

7. I agree.

Subrahmania Aiyar, J.

8. The facts of the case which are all undisputed, having been fully set out in the judgment the learned Chief Justice, I shall, without repeating them, proceed at once to consider the questions which in my opinion arise for determination. They are:

1. Whether the District Court had power to direct payment to the 1st respondent of the amount referred to in its order, notwithstanding that the money was not in the hands of either of the other parties to the litigation, the appellant or the 2nd respondent.

2. Whether, assuming the District Court had such power, it was precluded from directing the payment by the mere fact that the fund out of which the payment was to be made, was in the custody of another Court of co-ordinate jurisdiction (viz: of

the Sub-Court of Masulipatam), without any reference whatever to the circumstances of the litigation in connection with which the money came into the custody of that Court and to the rights possessed by the parties in the fund.

3. And lastly whether, if the order of the District Judge is not open to question on either of the above grounds, it was rightly passed on the merits.

9. Now the first question depends on the construction of Section 502 of the Civil Procedure Code which runs thus: 'When the subject matter of a suit is money or some other thing capable of delivery, and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last named party, with or without security, subject to the further direction of the Court.'

10. I can see no warrant at all either in the language or the reason of this provision, to confine its operation only to cases where the money or the thing capable of delivery is actually held by a party to the suit. If the intention of the legislature was so to confine it, it was of course the easiest thing to have made that intention clear. For instance that could have been done by inserting after the words 'capable of delivery' the short clause 'and is held by a party to the suit' and Subsisting for- the words 'any party thereto' immediately following, the word 'such party.' To adopt the construction suggested on behalf of the appellant is to import into the section the material words suggested above or something to that effect. It cannot be said that the introduction of such material words is necessary to avoid any absurdity or incongruity or the like, which would result from the adoption of the strictly grammatical construction of the section. No liberty being taken with the language of the section, it follows that the order contemplated by the section can be passed whether the money or other thing is in the hands of a party to the litigation or not, so long of course as such order is enforceable without infringing the rights of a person not a party to the suit.

11. There is nothing in the reason of the provision which should make us hesitate to accept this conclusion as the right one. In fact all considerations on that score will, [think, be found to point in its favour, As might have been expected, the

learned pleaders for the appellant did not shrink from urging that under the law of this country a Court has no power prior to decree to make any such order as is contemplated by Section 502, Civil Procedure Code, in respect of property in its own hands, even though the conditions as to the property being the subject-matter of the suit and the admissions as to the title thereto were present. As to whether such an order could be passed in virtue of any inherent authority in the Court, it may be observed that no power of the kind is claimed in respect of property in the hands of a party. It has to be borne in mind that there is an essential distinction between a Court's inherent power and its jurisdiction, I am not aware of any authority which supports the view that the inherent power of a Court could be invoked except for the limited purpose of preserving and enforcing order, securing efficiency and preventing abuse of process in the exercise of a jurisdiction which the Court otherwise possesses. This being so, unless Section 502, Civil Procedure Code, is held applicable to such a case, it would follow that the legislature, while taking the trouble to enable a Court to pass orders as to property in the hands of a party, in the circumstances contemplated by the section, has left unprovided the case of property otherwise similarly, circumstanced, because of the more advantageous fact that it is in its own hands. I, therefore, unhesitatingly come to the conclusion that the restricted construction sought to be put upon the section is untenable and that the District Court had power to direct the payment; notwithstanding that the money was not held by any of the parties to the suit, provided that the order was otherwise sustainable.

12. Passing to the next question, it is to be observed that the contention as to this on behalf of the appellant rests on the extraordinary assumption that once property in litigation passes into the custody of a Court, such custody becomes somehow completely disconnected with the matters in litigation and the rights of the parties concerned--that it has a magic about it which would preclude any other tribunal having jurisdiction over other litigation in respect of the same property and entitled by its adjudication to bind the parties litigating in the Court having custody, from passing any order affecting the property even though the execution of, or the giving effect to, such order in no way conflicts with any decrees or orders passed or to be passed by the Court having the custody. The very statement of this assumption is to my mind sufficient to expose its fallacious character. No cases

were cited in the argument throwing light on the point and apparently the question is new to this country. So far as I am aware there is little English authority bearing on the point and this is possibly because the conditions of judicature in England have scarcely admitted of any such question of conflict arising. If, however, we turn to the United States, such questions, owing to the existence side by side of Federal and State Courts, have arisen not infrequently and a number of cases are to be found in the reports of the tribunals of that country, dealing, with sufficient fulness and clearness, with the main principles applicable to the matter and the working thereof in actual practice. It is, however, enough for the present purpose to refer to a few of them.

13. *Buck v. Colbath* Wallace, p. 334 decided by the Supreme Court of the United States in 1865. seems to be a leading authority. There the facts were these. Buck, a Marshal of the United States, having in his hands a writ of attachment against certain parties,' levied the same upon certain goods. Colbath who was not among these parties brought an action of trespass in a State Court against Buck for taking the goods. At the trial, Colbath proved his ownership and Buck relied solely on the fact that he was Marshal and held the goods under the writ. The defence of the Marshal was held unsustainable.

14. Though so far as the facts go, the present case is different, yet as the law relating to the matter under consideration is elaborately expounded in the judgment, and as some dicta in an earlier decision of the same tribunal connected with the matter and likely to give rise to misapprehension are explained, it may be well, notwithstanding their length, to extract the following passages:

It must be confessed that this decision *Freeman v. Howe* 24 Howard, 450 took the profession generally by surprise overruling as it did the unanimous opinion of the Supreme Court of Massachussets as well as the opinion of Chancellor Kent in his Commentaries (Vol. 1., 410). We are however entirely satisfied with it and with the principle upon which it is founded, a principle which is essential to the dignity and just authority of every Court and to the comity which should regulate the relations between all Courts of concurrent jurisdiction. That principle is that whenever property has been seized by an officer of the Court by virtue of its process, the

property is to be considered as in the custody of the Court and under its control for the time being, and that no other Court has a right to interfere with that possession unless it be some Court which may have a direct supervisory control over the Court whose process has first taken possession, or some superior jurisdiction in the premises.*** A departure from this rule would lead to the utmost confusion and to endless strife between Courts of concurrent jurisdiction,* * * *

This principle, however, has its limitations ; or rather its just definition is to be attended. It is only while the property is in the possession of the Court either actually or constructively that the Court is bound or professes to, protect that possession from the process of other Courts. Whenever the litigation is ended or the possession of the officer or Court is discharged, other Courts are at liberty to deal with it according to the rights of the parties before them whether these rights require them to take possession of the property or not. The effect to be given in such cases to adjudications of the Court first possessed of the property depends upon principles familiar to the law; but no contest arises about the mere possession and no conflict but such as may be decided without unseemly and discreditable collisions. * * * It is obvious that the action of trespass against the Marshal in the case before us does not interfere with the principle thus laid down and limited. The Federal Court could proceed to render its judgment in the attachment suit, could sell and deliver the property attached and have its execution satisfied without any disturbance of its proceedings or any contempt of its process. While at the same time, the State Court could proceed to determine the questions before it involved in the suit against the Marshal without interfering with the possession of the property in dispute.* * * *

Seizing upon some remarks in the opinion of the Court in the case of Freeman v. Howe 24 Howard. 450 not necessary to the decision of that case, to the effect that the Court first obtaining jurisdiction of a cause has a right to decide every issue arising in the progress of the cause and that the Federal Court could not permit the State Court to withdraw from the former the decision of such issues, the counsel for the plaintiff in error insists that the present case comes within the principle of those remarks.

It is scarcely necessary to observe that the rule announced is one which has often been held by this and other Courts, and which is essential to the correct administration of justice in all countries where there is more than one Court having jurisdiction of the same matter. At the same time it is to be remarked that it is confined in its operation to the parties before the Court or who may, if they wish to do so, come before the Court and have a hearing on the issue so to be decided. *
* * But it is not true that a Court having obtained jurisdiction of a subject-matter of a suit and of parties before it thereby excludes all other Courts from the right to adjudicate upon other matters having a very close connection with those before the first Court, and in some instances requiring the decision of the same questions exactly.

In examining into the exclusive character of the jurisdiction of such Courts, we must have regard to the nature, remedies, the character of the relief sought and the identity of the parties in the different suits. For example, a party having notes secured by a mortgage on real estate, may, unless restrained by statute, sue in a Court of Chancery to foreclose his mortgage, and in a Court of law to recover a judgment on the notes and in another Court of law in an action of ejectment to get possession of the land. Here in all the suits the only question at issue may be the existence of the debt mentioned in the notes and mortgage; but as the relief sought is different and the mode of proceeding is different, the jurisdiction of neither Court is affected by the proceeding in the other. And this is true notwithstanding the common object of all suits may be the collection of the debt. The true effect of the rule in these cases is, that the Court of Chancery cannot render a judgment for the debt, nor judgment of ejectment but can only proceed in the own mode, to foreclose the equity of redemption by sale or otherwise. The first Court of law cannot foreclose or give judgment of ejectment; but can render a judgment for the payment of the debt ; and the third Court can give the relief by ejectment but neither of the others. And the judgment of each Court in the matter properly before it is binding and conclusive on all other Courts. This is the illustration of the rule when the parties are the same in all three of the Courts.

The limitation of the rule must be much stronger and must be applicable under many more varying circumstances when persons not parties to the first proceeding

are prosecuting their own separate interests in other Courts.

The case before us is an apt illustration of these remarks. The proceeding in the attachment suit did not involve the title of Colbath to the property attached. The whole proceeding in that Court ending as it might in a judgment for the plaintiff, an execution and sale of the property attached and satisfaction thereby of the plaintiff's debt, may be and in such cases usually is carried through without once requiring the Court to consider the question of title to the property. That is all the time a question between the officer or the purchaser at his sale, on the one side, and the adverse claimant on the other. There is no pretence, nor does any one understand that anything more is involved or concluded by such proceedings, than such title to the property as the defendant in attachment had, when the levy was made.

Hence it is obvious that plaintiff in error is mistaken when he asserts that the suit in the Federal Court drew to it the, question of title to the property and that the suit in the State Court against the Marshal could not withdraw that issue from the former.

15. Reference may next be made to the decision of the Supreme Court of Illinois in Plum and Atwood Manufacturing Co. v. Caldwell 29 ASR136 which strikingly brings out the necessarily intimate connection which exists between the custody of property by a Court and the rights of the parties concerned, and further shows that their acts pending such custody may enable another Court to pass decisions touching the property, in short, transfers jurisdiction over the property to that Court. The facts briefly were:

A corporation in Chicago had become insolvent. Writs of attachment had been issued at the instance of certain creditors of the corporation by a Circuit Court of the United States and property seized by the Sheriff thereunder. A voluntary assignment in favour of the creditors was then made and an assignee appointed. When the assignee sought to reduce the assigned property to possession he found it in the hands of the Sheriff who claimed the right to hold the same subject only to the order of the Court which issued the writs. However, the creditors at whose instance the writs had been issued and the seizure made gave their consent to an order by the County Court upon the Sheriff to pass possession to

the assignee subject to the lien, if any, in their favour arising by reason of the seizure. It was held that the property passed from the jurisdiction of the Circuit Court which made the seizure and had the custody to the country Court which had jurisdiction over the assignment for the benefit of creditors, on the simple principle that the jurisdiction of the former Court was one that could be waived by the party. The contention raised and the reasons for its being overruled were thus stated: Appellants deny the jurisdiction of the County Court to pass judgment upon the validity of the liens created by the levy of their attachments. They insist that the Circuit Court alone had jurisdiction over the attached property and could alone ascertain and declare their rights in respect of the same, This point may be conceded if the parties in interest had not by consent invested the assignee with the possession of the attached property and thus clothed the County Court with exclusive jurisdiction in respect thereof and in respect of all claims thereon. The only defect in the jurisdiction of the County Court was the want of possession by the assignee and when that defect was supplied by the voluntary consent of appellants that the property should pass to the assignee, subject to their claims, the County Court was clothed with full authority to settle all conflicting claims, including questions of priority that might arise in respect of such property. It was entirely competent for the parties to consent, as they did, to the order of the County Court directing the Sheriff to turn over possession of the property to the assignee. The rule giving exclusive jurisdiction to the Court first acquiring it is one that parties may waive ; and by consent the jurisdiction of the Circuit Court was here waived and the property passed into the hands of the assignee to be disposed of under the direction of the County Court, to all intents and purposes as if the assignee had acquired possession prior to the levy, but subject to the lien created by such writs. It is true that the consent of the appellants for the transfer of possession from the Sheriff to the assignee who is trustee for all the creditors as well as for the debtor corporation, was upon the condition that such transfer should be subject to all priorities, liens and rights that might have been acquired by the levy of such attachment. The right of all parties to the attached property was to remain in state quo. If appellants by their attachments had acquired valid liens, such liens were to remain unaffected by the order on the Sheriff to surrender possession to the assignee. This determined no right in the creditors, but left such

rights for future adjudication by the Court having jurisdiction of the insolvent's property. If the bank appellant had a prior lien by the levy of its execution, it was to continue a lien until the debt was paid. If, on the other hand, execution was obtained by fraud, or was preferential, then it would be set aside. And the same is true in respect of the attachments. These and all other questions by the voluntary surrender of the property to the assignee, were submitted to the judgment of the County Court.

16. The case of *Spiller v. Wells* 70 American State Report, p. 878 , 96 Virginia, 588 decided in 1899 by the Supreme Court of Virginia may be next noticed. The following passage at p. 880 of the American State Reports in the judgment is all that is material here:

The rule established is necessary to the orderly and decent administration of justice. Nothing can be more unseemly than a struggle for jurisdiction between Courts ;but a rule which rests for its support upon considerations of convenience however great, and of decency, order and priority however exacting must yield to the higher principle which accords to every citizen his right to have a hearing before some Court.

17. This extract shows that the jurisdiction arising from custody of property by a Court cannot bar the trial of a question relating to the property in another Court if such trial cannot be had in the Court having the custody.

18. The case of *Gay & Company v. Brierfield Coal and Iron Company* 33 ASR 94 decided by the Supreme Court of Alabama in 1891, though not a case of property in the custody of a Court, furnishes a clear illustration of the statement just made, for there it was held that though the trustee of a mortgage bond of an insolvent corporation had procured in a Circuit Court of the United States a decree for foreclosure and sale of property, the simple contract creditors of the corporation were at liberty to maintain a bill in a State Court to have the issue of the mortgage bonds and the decree for foreclosure in the Circuit Court declared fraudulent and void as to them. It was laid down that the right to maintain the bill rested not merely on the ground that the subject-matter of the second suit was not the same as that of the first, but also on the ground that the simple contract creditors suing

in the State Court were without adequate means of asserting their claims in the foreclosure suit in the Circuit Court, since they were unable to make themselves parties there to without the consent of the complainant therein, and did not occupy that relation to the matter or the parties in the suit which would enable them to file a bill of review of the decree and show error apparent on the record. The ground for the decision was thus put by the Court (see p. 136 of the American State Reports):

All authorities recognize the importance of carefully preserving the boundary line between Courts of concurrent jurisdiction in order to prevent conflicts and to preserve in harmony their relations to each other.* * * To prevent abuse of the principle, and the successful perpetration of injustice or fraud through the forms of law, Courts accord to suitors and litigants all necessary latitude ; and they are not restricted to any one forum or the adjudication of any question or right, provided only that such adjudications are not upon questions pending in another Court which had prior jurisdiction and provided that its writs or process shall not hinder the performance of any lawful mandate of such concurrent Court or interfere with or disturb the possession of any subject-matter then in gremio legis.

19. From the above authorities and others which I refrain from quoting lest this judgment might be unduly encumbered, for instance, cases of seizure by a State Court of property subsequently litigated in Federal Courts on the ground of Maritime liens thereon, over which class of litigation Federal Courts alone have jurisdiction, as to which *Moran v. Stunges*, 154 United States Reports, p. 256 and the cases cited therein may be consulted, the following propositions would be seen to be clearly deducible:

(I). That the custody by a Court of property belonging to litigants does not give the Court any arbitrary power over it,

(II). that though such custody could not be interfered with directly by the orders of another Court, yet this is but a rule of comity intended solely to avoid unseemly collisions in the execution of process of different authorities.

(III), that the rule in question is not a rigid and inflexible one but is capable of adaptation to circumstances and could never be worked so as to defeat or obstruct the doing of justice in due course and consequently in no way interferes with the power of a Court other than that having custody to pass orders touching the property where it has jurisdiction to pass the orders and bind the parties in connection with whose litigation the custody of the other Court began, and

(IV). that it is therefore incumbent on the Court having the custody, on due application being made to it, to give effect to such an order in so far as it is not inconsistent with the performance of its own duties respecting the property in the litigation before itself.

20. It is obvious that there is nothing in the rules thus' deduced, that is peculiar to any particular country and that they rest on a policy necessarily applicable to every system of judicature presenting similar conditions. Indeed Section 272 of the Code of Civil Procedure on which Mr. Krishnaswami Aiyar relied, not--as I understood him--as directly governing the present case, but only as supporting his argument by analogy, contains a distinct recognition of the principles referred to in so far as execution of decrees passed by one Court, by attachment of property in the custody of another Court, is concerned.

21. I ought perhaps to add that no argument against the soundness of the conclusions come to by me can be derived from the absence of an express provision in the Code pointing out how effect is to be given to an order passed under Section 502. Civil Procedure Code, in respect of property in the custody of another Court. But likewise the Code contains no direction as to how a decree by one Court in respect of property in the custody of another Court, is to be carried out. Of course on the transmission of the decree to the Court having the property, that Court under Section 228 of the Civil Procedure Code should direct the property to be dealt with according to the decree. And this would be so, not because of any express direction in the Code in respect of the specific case but because that would necessarily be the course to be adopted had the property been in the custody of the very Court which passed the decree It follows, therefore, that in a case like the present it would be the duty of the Court having

the property to direct payment in accordance with order so far as such payment would in no way derogate from anything to be done by itself, on due application being made to it. Whether the application is to take the shape of a requisition by the Court itself or that of a petition by the party interested, is a mere matter of form which in no way affects the competency of the Court to pass the order or the validity thereof otherwise. The general principles applicable to the subject being apprehended to be as stated above, I shall proceed to consider the case with reference to the circumstances of the respective litigations in the two Courts.

22. First as to the litigation in Masulipatam, the original plaintiff, the Medur Ranee, claimed that she was entitled to the money among other properties as her deceased son's heir. This was denied by the defendant Papamma Row who herself claimed the property as adoptive mother and heir of the deceased. The suit was dismissed. Appeals have been preferred to this Court in which the present appellant is contesting the respondents' claim in the right relied on by Pamma Row. The appeals have not been decided by this Court and there is no decree touching the property in question to be executed. In this state of matters Papamma Row's successors, no doubt, may, subject, to any order of the Appellate Court in the matter, ask the Musulipatam Court to direct payment of the money in its custody to themselves. But such an application is, in the circumstances, impossible for the two others entitled on the appellant's showing as Papamma Row's successors are the respondents themselves, who deny his right to participate in the fund and base their case on a footing inconsistent with Papamma Row's alleged right itself, viz., that of the Medur Ranee's alleged right. Now looking from the point of view of those claiming under the Medur Ranee, it is clear they could not obtain any relief, interlocutory or otherwise, unless they succeeded in the appeals; and supposing they do, no order to be passed in pursuance of the appellate decree in such event, can really conflict with the present order directing payment of a third of the money in the custody of the Court to the first respondent, since the party entitled to the benefit of both the orders is one and the same person, viz., the first respondent himself, who would then be entitled to even more than a third, viz., a half.

23. Obviously therefore in no view of the possible termination of the Masulipatam litigation can it be said that the order of the Godavari Court would in any way trench upon any orders to be passed by the Masulipatam Court in respect of the money.

24. Turning to the Godavari litigation it should be remarked that the appellant's claim to a share in the moneys is only as one of the successors of Papamma Row. That no question between him and the respondents on the footing on which this suit of the appellant rests, could have been or could be litigated in the Masulipatam Court is patent; for there the Court was called upon simply to decide whether the Medur Ranee's claim or Papamma Row's claim was well founded. If the former be upheld by the ultimate decree in that case, that would exclude the appellant from any participation in the money, on the very hypothesis on which his case in both the Courts rests. If, on the other hand, Papamma Row's claim be upheld that would result in the confirmation of the decree dismissing the suit and the Court could not go into any dispute arising between those entitled to take as Papamma Row's successors inter se. Hence the inclusion by the appellant himself of the fund in the custody of the Masulipatam Court, among the properties in litigation in the Godavari Court and the claim for the division thereof. The appellant having thus made the fund a subject of the suit and having had all along to admit the 1st respondent's right therein to the extent of a third at least, it is impossible to see how it can lie in his mouth to question by any reference to the Masulipatam litigation the power of the Godavari Court to pass orders respecting it.

25. This being so, the order of the District Judge taking Section 502, Civil Procedure Code, to be applicable to the case, cannot but bind the appellant and the other parties to the litigation and preclude any of them from contending to the contrary before the Masulipatam Court in any proceeding coming before it between these parties, and the Masulipatam Court must give effect to it since, as already shown, no real conflict can in consequence arise between the process of the two Courts in the matter.

26. Lastly, as to the merits, they are all in favour of the 1st respondent. It was said on behalf of the appellant that the appeals to this Court in the Masulipatam suit as

well as the original suit in the Godavari Court are likely to be disposed of ere long. But the disposal of those matters cannot bring the object proposed to be effectuated by this order within measurable distance of its being otherwise accomplished. It is impossible to say what the result will be in the appeals to this Court or in the suit in the Godavari Court and when, if at all, a final decree in favour of the 1st respondent will be passed, seeing that the class of litigants before us, disputing about valuable Zemindaris, almost think that it is beneath their dignity to be content with any but a decision of His Majesty in Council, Moreover the passing of the Impartible Estates Act which tied the hands of the parties for more than a year is an incident sufficient to show the peculiar vicissitudes to which litigation in this country is subject. Though it is some years since the litigation between the parties began, the 1st respondent admitted on all hands to be entitled to a third, has been unable to get a single rupee yet, out of the large accumulated fund in the Masulipatam Court or out of that in the Godavari Court, and he is similarly kept out of the enjoyment of even his admitted share of the income accruing from time to time, out of the Zemindaris, the annual net rent of which alone is over two lakhs of rupees. It is not surprising therefore that he has been unable to mete the demands of his creditors and is threatened with litigation and loss. The appellant, on the other hand, has failed to show by anything tangible that his interest would suffer by the 1st respondent's application being granted. It seems therefore to me that the District Court exercised a very proper discretion in making the present order which it safeguarded by the reservation of funds required to meet all contingencies and by requiring security.

27. It remains only to add that the mention of attachment in the Judge's orders should be taken to have reference to what is to be done on the receipt of the money. I understand the District Court to say that in order to give effect to its intensions it would treat the money when received as in its hands for the satisfaction of the 1st respondent's creditors and would make payment accordingly from time to time.

28. I would therefore dismiss the appeal with costs.

Arnold White, C.J.

29. In accordance with the decision of the majority of the Court, the order of the District Judge will be set aside.

30. The 1st respondent must pay the costs of the appellant and of the 2nd respondent here and in the Court below.

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