

Virasami Vs. Athi

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Court : Chennai

Decided On : Sep-11-1884

Reported in : (1883)ILR7Mad595

Judge : Charles A. Turner, Kt., C.J. and ;Brandt, J.

Appellant : Virasami

Respondent : Athi

Judgement :

1. The respondent, Athi Nayak, obtained a decree against Virasami Chetti, the appellant, on the 5th March 1879, and on the 16th September 1879 he applied to execute the decree by the attachment and sale of certain properties which he alleged belonged to the appellant. Orders were accordingly issued and a sale took place and was confirmed on the 8th January 1880.

2. The auction-purchaser, Subbaraya Chetti, being informed that the appellant had no title to the properties sold, instituted a suit and obtained a decree for the cancelment of the sale on the 2nd April 1881.

3. On the 2nd November 1881 Subbaraya Chetti obtained an order for the restitution of the purchase money, and it was paid to him by the respondent in December 1881.

4. On the 2nd March 1883 the respondent again applied for execution by the arrest of the judgment-debtor.

5. The Munsif relying on *Paras Ram v. Gardner* I.L.R. 1 All. 355 and *Issuree Dasse v. Abdool Khalak* I.L.R. 4 Cal. 415 held that the application was in time.

6. In *Paras Ram v. Gardner* the decree-holder had attached property which was released on the claim of an objector, against whom the decree-holder then instituted a suit to contest the order. He obtained a decree and applied to the Court to have the same property brought to sale in execution of the decree : it was held that the application was to continue the proceedings already instituted. In *Issuree Dasse v. Abdool Khalak*, the Court held that the application then before it was in substance an application to continue 'proceedings already commenced by the last preceding application. In *Paras Ram v. Gardner* it is clear that it was so. The facts stated in the report do not show that the application was so in *Issuree Dasse v. Abdool Khalak*. Where the subsequent application can be regarded as a continuance of the former proceedings, suspended by a step necessary to give effect to them, we should follow *Paras Ram v. Gardner*.

7. In this case the respondent has made an application not for execution by the attachment and sale of properties to which his former application applied, but by arrest of the judgment-debtor. It is a fresh application and the rule of limitation applies to it which would apply to any second or subsequent application, namely, that it must be made within three years from the date of the last application to the Court executing the decree to execute the decree or to take some step in aid of execution. Following the decision in *Khair-un-Nissa v. Gauri Shankar* I.L.R. 3 All. 484 we must hold that the application of the decree-holder is barred, and, reversing the orders of the Courts below, dismiss the application with costs throughout.