

Govindappa Vs. Hanumanthappa

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Court : Chennai

Decided On : Oct-02-1912

Reported in : 17Ind.Cas.420; (1912)23MLJ513

Appellant : Govindappa

Respondent : Hanumanthappa

Judgement :

Abdur Rahim, J.

1. This second appeal raises the question whether a judgment-debtor from whom the assignee of a money decree has realized the decretal amount in execution is entitled to recover it back from him when the decree is afterwards reversed in appeal, if the assignee of the original decree was not brought on record in the appeal. I may mention that it is not necessary to consider the question whether the plaintiff could and should have sought his remedy for restitution by an application made to the court which executed the decree, for he did make such application and it was on the objection of the defendant that he was driven to institute the present suit and the defendant cannot now be heard to say that the procedure to which he himself successfully objected was the proper procedure.

2. Upon the merits what is urged in support of the judgment of the Subordinate Judge who has decided against the plaintiff's claim is that he not having impleaded the present defendant who had obtained an assignment of the decree of the first

court as a respondent in the appeal against the decree, the decree of the appellate court cannot bind him because it might be that the decision of the appellate court was the result of collusion between the present appellant and the original decree-holder, the assignor of the defendant. Now no such fraud was ever pleaded and it is possible that if it was pleaded and proved that would be a sufficient answer to the suit. But in the absence of fraud it is difficult to see why the decree of the appellate court should not bind a person who has chosen to obtain an assignment of the decree of the first court. It is not contended that a judgment-debtor wishing to appeal against the decree is bound to make the assignee of the decree a party to his appeal though it might be open to him to apply for an order to that effect. The judgment-debtor's right of appeal is in no way affected by any intermediate assignment of the first court's decree. The assignee himself might apply to be brought on record in the appeal and if he chose to leave the conduct of the appeal to the decree-holder it does not stand to reason that it should be open to him to question the decree that may be passed by the appellate tribunal. It is the decree of the latter court that is the final decree in the case being in substitution of the original decree and the doctrine of *lis pendens* clearly applies to an intermediate assignment of the original decree. The fact that the assignment was made before the appeal was filed cannot make any difference in this respect; (See *Settappa Gounden v. Muthiah Gounden* I LR (1908) M. 268, nor for reasons already stated, the fact that the judgment-debtor had knowledge of the assignment before he lodged his appeal.

3. On behalf of the respondent much reliance is placed on *Lalta Prasad v. Sadiq Hussain* I.L.R. (1902) A 288 which is certainly a decision directly in favor. On the other hand the appellant cites in support of his contention the authority of *Tangi Joghi v. Hall* I.L.R. (1899) M. 203. With all respect to the learned judges who decided the former case we are unable to accept their view of the law. The main reasoning on which that ruling is based seems to be that because in case the judgment-creditor himself had executed the decree of the first court and made over the money realized to a third person, the judgment-debtor who succeeded in appeal could not follow the money in the hands of the third person it must be held that where the assignee of the decree himself realized the decree in execution the judgment-debtor would have no cause of action against him, when the original

decree is reversed in appeal. In my opinion the two casts are not based on the same legal considerations. Money is not ear-marked property and therefore in the first case there is no principle of law according to which it can be followed in the hands of a third person. But the other case is quite different. Here one person by a compulsory process of court obtains money from another and it is afterwards declared by a superior tribunal that the original process was justified. It seems to me that money so obtained under an invalid process of court must be treated as money had and received to the use of the person from whom it was received. That is the principle on which the doctrine of restitution which underlies Section 583 of the Civil Procedure Code of 1882 rests. The decision in *Tangi Joghi v. Hall* I.L.R. (1899) M. 203 in my opinion supports the distinction which we have drawn between a case where the act complained of and in respect of which restitution is sought was done by the agency of the court and a case where such act was independent of any process of court. There is no doubt that the property of which restitution was sought in the Madras case was immoveable property but the principle of the decision is to my mind, equally applicable in a case like the present. That principle is well expressed in the observations of an American Court cited by the learned Judges in *Doniisami Aiyar v. Annasand Aiyar* I.L.R. (1899) M. 306. 'But the cases have no application where the party seeking to be restored to possession has been wrongfully dispossessed by the agency of the court. He does not stand in the position of the actor in a suit who seeks the aid of a court to regain any possession lost by his own negligence or misfortune. On the contrary he is out of possession only because the court has wrongfully made room for him to get in...'. The plaintiff in my opinion is entitled to restitution. The decree of the Lower Court must therefore be reversed and that of the District Munsif restored with costs in this Court and in the Lower Appellate Court.

Sadasiva Aiyar, J.

4. I concur with my learned brother and I cannot usefully add anything to what he has said.