

Kuppusami Iyer and anr. Vs. K. Kuppusami Iyer and ors.

Kuppusami Iyer and anr. Vs. K. Kuppusami Iyer and ors.

SooperKanoon Citation : sooperkanoon.com/794168

Court : Chennai

Decided On : Aug-15-1918

Reported in : 48Ind.Cas.109

Judge : Abdur Rahim and ;Oldfield, JJ.

Appellant : Kuppusami Iyer and anr.

Respondent : K. Kuppusami Iyer and ors.

Judgement :

Abdur Rahim, J.

Appeal Against Appellate Order No. 70 of 1916.

1. The case arises out of an application by a holder of a decree to enter satisfaction under the rules of the Civil Procedure Code. That decree was attached by certain judgment-creditors of the decree-holder and these attaching creditors have been made parties to the application by the District Munsif and they are on record. The adjustment or payment was made after the decree had been attached, but it appears that no notice of such attachment was issued to the judgment-debtor. The decree-holder must have and, in fact, did have notice of the attachment.

2. The position taken up on behalf of the decree-holder is that until notice has been issued to the judgment-debtor upon an application made by the attaching creditor, the judgment-debtor is entitled to make any payment or adjustment he likes and when once such payment or adjustment is made, the Court is bound under Order XXI, Rule 2, to record satisfaction, whether the application therefor is made by the judgment-debtor or by the decree-holder and whatever the rights of attaching creditor may be.

3. Reliance is placed in support of the argument on clause 6 of Rule 53, Order XXI. That clause says 'no payment or adjustment of the attached decree made by the judgment-debtor in contravention of such order after receipt of notice thereof, either through the Court or otherwise, shall be recognized by any Court so long as the attachment remains in force.' The clause is not very happily worded and I am inclined to think on the whole that the words either through the Court or otherwise' refer to 'payment or adjustment' and not to notice'. It is contended thereupon that the adjustment in this case must be held to be valid and effective. I do not think, however, that this necessarily follows. It is not a case merely between a judgment-debtor and his decree-holder but the attaching creditors of the decree holder have also been made parties. The question before us is not merely whether the Court shall or shall not record satisfaction under Order XXI, Rule 2. 'We have got to decide upon the rights of the parties. Here the appellant's decree was undoubtedly attached and he had notice of it. He purports to deal with that decree in spite of the attachment. Supposing instead of a decree, this case was of an ordinary property, moveable or immoveable. The owner of it, after attachment, would have no rights to deal with it and any such dealing would be invalid or ineffective as against the attaching creditor, That is the general law and I do not find anything in Rule 53, Order XXI, which has necessarily the effect of overriding it. The notice to the judgment-debtor is not necessary for the purpose of completing the attachment. The attachment is complete before any such notice is issued. The Court has to issue the notice if an application to that effect is made by the decree holder, but without notice, the attachment is undoubtedly complete. Then it is difficult to conceive that the decree-holder whose decree has been attached could by dealing with it affect the rights of his own creditor in the attached decree. This appeal must fail and is dismissed with costs.

Oldfield, J.

4. I agree. I have some doubt regarding the proper construction of Order XXI, Rule 53 (6), and I prefer to ex-press no opinion in this case on the question whether, as between judgment-debtor and decree-holder, notice from the Court is essential to support an objection to the recording of satisfaction. I, however, adopt unreservedly the broad ground of decision on which my learned brother's conclusion, rests.

Civil Revision Petition No. 866 of 1916.

5. The civil revision petition is also dismissed. There will be no separate costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com