

Pethaperumal Chettiar Vs. Chidambaram Chettiar

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Court : Chennai

Decided On : Jan-28-1927

Reported in : AIR1927Mad592; 102Ind.Cas.396; (1927)52MLJ670

Judge : Ramesam and ;Madhavan Nair, JJ.

Appellant : Pethaperumal Chettiar

Respondent : Chidambaram Chettiar

Judgement :

1. For the purposes of this Letters Patent appeal, the facts may be briefly stated. The appellant in the Letters Patent appeal filed a suit in the Sub-Court of Ramnad (O. S. No. 108 of 1919) against the respondent to recover a sum of money due on a hundi and obtained a decree in the High Court in A.S. No. 361 of 1922. Afterwards a third party filed a second suit in the Subordinate Court of Devakottah (O. S. No. 46 of 1926) for a declaration that the appellant is not entitled to keep the amount in respect of which he obtained the former decree. He also applied for an injunction against the appellant restraining him from proceeding with the execution of the decree in O.S. No. 108 of 1919. The Subordinate Judge gave an injunction which, while permitting the appellant to execute the decree obtained by him, directed that the money realised in execution should be deposited in Court until further orders. This was on 15th April, 1926. Up to this stage, the respondent before us was not a party to Order S. No. 46 of 1926. In about June or July 1926, he was then impleaded in the suit. Finding that the order of the Subordinate Judge

permitting execution of the former decree, somewhat inconvenient, the respondent applied to the High Court by C.M.P. No. 4517 of 1925 in A.S. No. 361 of 1922, dated 17th December, 1926 for an order of injunction staying execution proceedings altogether. This petition came on before our brother Waller, J., who granted the injunction and the appellant has filed this Letters Patent appeal against that order.

2. The respondent takes the preliminary objection that the order of Waller, J., is not a judgment and no appeal lies. Following the judgment in *Govinda Ramanuja Pedda v. Krishnamacharlu* : AIR1927 Mad398 (to which one of us is a party) where the cases have been exhaustively reviewed and which considers *Tata Iron & Steel Co. Ltd. v. Chief Revenue Authority, Bombay* : (1923)25BOMLR908 now strongly relied on by Mr. Krishnaswami Iyengar, we hold that an appeal lies.

3. Coming to the merits of the appeal, the appellant contends that Waller, J., had no jurisdiction to pass the orders he had made. The respondent, though he referred, in the course of the argument to Order XXI, Rule 26 and other provisions of the Code, expressly conceded that he does not rely on any provision other than Section 151 to invoke such jurisdiction. Mr. Krishnaswami Iyengar the learned Counsel who appears for the respondent, first relied on *Peruri Sooryaprakasam v. Muniswami Chetty* : AIR1925 Mad42 in which our brother Kumaraswami Sastri, J., held that the Court of first instance had inherent jurisdiction under Section 151 to stay execution of a decree by way of arrest and not to stay the execution altogether. It is doubtful if it is necessary to rely on Section 151 for such a power. The next case relied on by him is *Nanda Kishore Singh v. Ram Golam Sahu* 18 Ind. Cas. 207 : 40 C. 955 : 16 CRI.L.J. 508. In that case the High Court refused leave to appeal to the Privy Council but steps had been taken to obtain special leave from the Judicial Committee. Pending the orders of the Committee, an application was made to the High Court for stay of execution of its decree. Mukerjee, J., held it had the power under Section 151 and Holmwood, J., did not differ though inclined to do so. But it seems to us that the language of Order XLV, Rule 13 is enough to cover the case. Still the fact remains that Section 151 was invoked by one of the learned Judges. The next case relied on is *Kulada Prasad Tewari v. Sadhu Charan Tewari* 48 Ind. Cas. 107 : 3 P.L.J. 435. In that case the

decree of the High Court was being executed by the Sub-Court in a manner manifestly at variance with the purport and intention of the decree of the High Court. An appeal was filed to the High Court and a preliminary objection was taken that, at that stage no appeal lay. The Judges held that, if no appeal lay, the power under Section 151 will enable them to prevent an abuse of the process of the Court by a misunderstanding of the decree. It may be that, in proper circumstances, to prevent gross abuse of the powers of the Court, Section 151 may be invoked in support of the inherent jurisdiction of the High Court as in the Patna case. But we think the present case is not such a case. We think it is an improper use and erroneous construction of Section 151 to invoke it for power which can be found in other provisions of the Code. When the remedy is open to the petitioner to enable him to obtain the relief he seeks from the Subordinate Court of Devakottah, and if refused there, from the High Court itself in appeal, there is no need to rely on Section 151 for the purpose.

4. The respondent was made a party to the suit in about July 1926 long before he filed the application to the High Court.

5. It is now open to him to apply to the Subordinate Judge to make the injunction of a wider scope than the former order of the Subordinate Court and to get an order in the terms of that of Waller, J., if the Subordinate Judge thinks fit to pass such an order. We do not wish to express any opinion as to the desirability of such an order. If any party is dissatisfied with the order of the Subordinate Judge, he can carry an appeal to the High Court which then will have its jurisdiction to deal with it.

6. In these circumstances, we set aside the order of Waller, J. The appellant will have his costs before him and before us.

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