

Ramaswami Naicker Vs. Jagadeesan

Ramaswami Naicker Vs. Jagadeesan

SooperKanoon Citation : sooperkanoon.com/822981

Court : Chennai

Decided On : Jul-23-1979

Reported in : (1977)2MLJ261

Appellant : Ramaswami Naicker

Respondent : Jagadeesan

Judgement :

ORDER

S. Suryamurthy, J.

1. This is a civil revision, petition against the order of the learned District Munsif, Sattur, dismissing the petition filed by the civil revision petitioner praying for rateable distribute on of the proceeds of the sale of immovable properties effected in E.P. No 331 of 1974, in O.S. No. 485 of 1972. The civil revision petitioner filed O.S. No. 128 of 1972 on the file of the District Court, Ramanathapuram at Madurai, and obtained a decree against the defendant in the suit. The respondent herein filed O.S. No. 485 of 1972 on the file of the District Mursif's Court, Sattur, and obtained a decree against the same defendant. Both the decrees were for payment of monies. The civil revision petitioner filed an execution petition in the Sub-Court of Ramanathapuram at Madurai for attachment and sale of the immovable properties of the judgment-debtor. The respondent herein in execution of the decree obtained by him in the aforesaid O.S No. 485 of 1972 filed E.P. No.

331 of 1974 in the District Munsif's Court, Sattur, for attachment and sale of the same in movable properties in pursuance of the decree against the same defendant. While the petition in the Sub-Court filed by the civil revision petitioner was pending, the properties were sold in Court auction in pursuance of the proceedings in execution in the Court of the District Munsif, Sattur, and the amount realised by the sale of the properties was deposited into Court. Thereupon, the civil revision petitioner ceased to pursue the execution proceedings in the Sub-Court. Instead, he applied to the District Munsif's Court, Sattur, for rateable distribution of the amount which was held in deposit to the credit of O.S. No. 485 of 1972. The learned District Munsif was of the view that because the execution petition in pursuance of the decree in the aforesaid O.S. No. 128 of 1972 was not pending in his Court, the petitioner is not entitled to rateable distribution. He, therefore, dismissed the petition. Aggrieved by this order of the learned District Munsif, the decree-holder in O.S. No. 128 of 1972 has preferred this civil revision petition.

2. The matter in dispute is simple and is covered by authority. The Sub-Court of Ramanathapuram is a Court of higher grade than the District Munsif's Court, Sattur, and is in fact the Court which has appellate jurisdiction over the District Munsif's Court, Sattur. Section 63, Civil Procedure Code lays down that-

Where property not in the custody of any Court is under attachment in execution of decrees of more Courts than one, the Court which shall receive or realise such property and shall determine any claim thereto and any objection, to the attachment thereof shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

Section 73, Civil Procedure Code under which the application was filed for rateable distribution has to be read with Section 63, Civil Procedure Code. Thus read, the civil revision petitioner is entitled to rateable distribution. This position is covered by authorities.

3. In *Magraj Iswaradai v. The Corporation of Madras* : AIR1936 Mad797 , a Bench of this Court has laid down that the application for rateable distribution was

sustainable under Section 73 read with Section 63, Civil Procedure Code, in similar circumstances. The facts leading to the decision in that case are stated thus:

The decrees in favour of the respondents (The Madras Corporation) were passed by the High Court on its Original Side; so was the decree in favour of the appellant. The former decrees were sent to the Sub-Court, Chingleput, for execution: the latter to the District Court, Chingleput. In pursuance of the respondent's decrees the properties were attached by the Sub-Court in January, 1932 and the sale was held on the 28th September, 1932. The Corporation obtained leave to bid and was allowed to set-off the purchase price against the decree amount. As the amount due to it exceeded the amount of its bid, it did not have to bring any sum into Court. In the meantime, the appellant, another decree-holder, got the same properties attached in November 1931, in the District Court. An order was made fixing 19th October, 1932, as the date of sale. We may take it that so far each decree-holder acted in ignorance of the proceedings taken by the other. The appellant, now becoming aware of the sale that had already been effected, applied to the District Court under Section 63 to call for the proceeds of the sale from the Sub-Court and distribute them rateably. The difficulty arises thus. The decrees passed here are not decrees 'of more Courts than one'; they are all passed, as we have just said, by one and the same Court, namely, the High Court of Madras. That being so, does Section 63 apply? In our opinion it does. There are two modes of arriving at this result: first, by reading the words 'of more Courts than one' in Section 63 as qualifying the word 'attachment' and not the word 'decrees'; secondly by calling in aid Section 42 which says that the Court executing the decree sent to it shall have the same powers in executing such decree as if it had been passed by itself.

Thereafter, the Division Bench has observed:

We are prepared to rest our judgment upon the first of these grounds. The object of Section 63 is to deal with several attachments, no matter whether the decrees passed are, by the same Court, or by different Courts. By which Court the decrees have been passed, is an immaterial detail--the emphasis is upon the word

'attachment' and not upon the word 'decrees'. In other words, the phrase 'in execution of decrees' is explanatory of the word 'attachment' and may well have been left out without affecting the sense. The words 'by more Courts' in the place of 'of more Courts' should have made the meaning plain and put the matter beyond doubt. The question then is what is the proper order to make? As held in *Madden v. Chappani* I.L.R. (1887) Mad.356, the purchaser must be allowed to make his choice; either he may elect to have a re-sale or to pay into Court so much of the price as may become due on rateable distribution to the rival decree-holder the appellant.

4. On the other side, reliance is placed by the learned Counsel for the respondent on a decision by Kailasam, J., (as he then was) in, *Veerappa Chettiar v. Palaniappa Chettiar* : AIR1973 Mad313 . In that case, the question arose whether the respondent was entitled to rateable distribution, under Section 73, Civil Procedure Code. The learned Judge has observed that:

Section 73, Civil Procedure Code, provides that, where assets are held by a Court and more persons than one have before the receipt of such assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realisation, shall be rateably distributed among all such persons. The following conditions have to be satisfied before Section 73, Civil Procedure Code can be applied;

- (1) the decree-holder claiming rateable distribution should have applied for execution of his decree to the appropriate Court.
- (2) such application should have been made prior to the receipt of the assets by the Court.
- (3) The assets of which a rateable distribution is claimed must be assets held by the Court.
- (4) The decree-holder should be holder of a decree for the payment of money.

(5) Such a decree should have been obtained against the same judgment-debtor. In the instant case, the sale proceeds of the property deposited in the Sub-Court, Devakottai, are the assets held by the Court. The contention of Mr. Rajagopala Iyer, is that the respondent had applied for the execution of his decree before the assets were received by the Court and the respondent is entitled to the benefit of rateable distribution under Section 73, Civil Procedure Code. It is not disputed that the respondent in this case had applied for execution of his decree on 23rd June, 1971, in the District Munsif's Court, Devakottai, before the assets of Rs. 4,275 were received by the Sub Court, Devakottai. But the question is whether the respondent had applied to the proper Court for rateable distribution before the assets were received and held by the Court. A reading of Section 73

(1) shows that the application for execution of decree should have been made to the Court, before it received and held the assets. An application for execution of decree made to any Court other than the Court which received the assets would not be a sufficient compliance with the requirement of Section

73. The wording of the section is 'where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for execution which means that the application for execution of the decree should be made to the Court before it received and held the assets. Mr. Rajagopala Iyer submits that under Section 73 read with Section 63, Civil Procedure Code, an attaching decree-holder is entitled to rateable distribution even though he has applied for execution of his decree in a different Court. As already pointed out, Section 63 states as to how the claims of several attaching decree-holders should be determined. Under that section, if the decree-holders had attached the property that had been sold and sale proceeds realised, the distribution may be according to the provisions of Section

73. But Section 63 cannot be invoked, if the decree-holders had not attached the property. Section 73, stands by itself and relates to the distribution of assets in Court whether the property has been attached by the concerned decree-holder or not. For the application of Section 73, the property need not be attached; but an application for execution of the decree should have been taken in the Court, which

received and held the assets. Section 73 cannot be construed in such a way as to enable all the decree-holders, who have taken execution applications in different Courts, to claim rateable distribution of assets received and held in one Court. Such a construction is not warranted.

The principles enunciated in that decision are in no way in conflict with the principles laid down by the Division Bench referred to earlier. The case before Kailasam, J., (as he then was) was a case in which the person who claimed rateable distribution had filed an execution petition in a Court of inferior jurisdiction to the Court in which the properties were brought to sale and sold, in auction and which held the said pro-needs. Section 73 read with Section 63, Civil Procedure Code could not be applied to the facts of that case. In the instant case, the provisions of Section 63 read with Section 73, Civil Procedure Code are applicable, and, therefore, the petitioner is entitled to rateable distribution. He may call for the assets held by the learned District Munsif of Sattur to the credit of the suit in the Court of the learned Subordinate Judge of Ratnanathapuram and claim the amount due to him. In that case, the respondent herein will be obliged to go to the sub-Court at Ramanathapuram and claim rateable distribution.

5. Now, the learned Counsel for the respondent is anxious that the civil revision petitioner should not have recourse to the procedure of applying to the Sub-Court at Ramanathapuram to send for the amount in deposit in the District Munsif's Court, Sattur, as it may involve further expenditure for his client in his endeavour to claim rateable distribution from out of the assets which will be held by the Sub-Court of Ramanathapuram at Madurai if the assets held in the District Munsif's Court at Sattur are sent there. Therefore, he prays that the civil revision petitioner may be permitted to make his claim in the District Munsif's Court, Sattur itself and to this the learned Counsel for the civil revision petitioner agrees. I am of the opinion that this is also in the interests of justice, and this can also be done in view of the principles enunciated by Madhavan Nair, J., (as he then was) in *Thanmull Sowcar v. K. Krishnaswami Reddi* : AIR1935 Mad988 .

6. The civil revision petition is allowed, but without costs. The learned District Munsif is directed to take on file the application filed by the civil revision petitioner

for rateable distribution and apportion the amount due to him rateably.

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