

APPELLATE CIVIL.

Before Mr. Justice Abdur Rahim.

AMARA VEERAYYA, PETITIONER,

v.

ANNAMALA CHETTY PICHAYYA AND OTHERS,
RESPONDENTS.*1908
September
4, 22.

Civil Procedure Code—Act XIV of 1882, ss. 295, 490, 648—Right to rateable distribution of creditor attaching before judgment—“Realization” of assets—Attachment before judgment if property outside jurisdiction.

Under section 490 of the Code of Civil Procedure read with section 273, the property of a judgment-debtor attached before judgment is brought into Court by stress of the attachment, and, where a decree follows the judgment, the creditor will be entitled, without a fresh attachment, to rateable distribution out of the proceeds of the sale of such property under section 295. The fact that subsequent to realisation, he applies for attachment, of the amount, will not affect his right, as no such attachment was necessary.

The operation of section 295 is not confined to cases where the property actually sold and realised belongs to the judgment-debtor. It is also applicable where the attached property is a decree in favour of the judgment-debtor against others, and the money is realised in execution of such decree by the sale of property belonging to such others :

Semble, under section 648 of the Code of Civil Procedure, property outside the jurisdiction of a Court in which a suit is pending can be attached by such Court in anticipation of its judgment.

Ram Pertab Jhobar v. Madho Rai, (7 C. W. N. 216), referred to.

Srinivasa Ayyangar v. Seetharama Ayyar, (L L. R., 19 Mad., 72), distinguished.

The facts of this case are fully stated in the judgment.

T. Pattabhi Rama Ayyar for petitioners.

V. V. Srinivasa Ayyangar for respondents.

JUDGMENT.—The petitioner Amara Veerayya obtained a decree, on the 29th January 1901, against one Krishnam Ramasamy and two other persons for Rs. 342 and odd, in the Court of the District Munsif of Kavali. Before he obtained that decree, he had applied under section 483, Civil Procedure Code, for attachment before judgment of a mortgage decree passed by the Nellore

* Civil Revision Petition No. 473 of 1905, presented, under section 622 of the Code of Civil Procedure praying the High Court to revise the order of the District Judge of Nellore in Execution of petition No. 183 of 1904 (Original Suit No. 993 of 1900).

District Court in Original Suit No. 21 of 1895 in favour of Krishnam Ramasamy against certain other persons; and, on the 6th December 1900, a prohibitory order was issued by which the District Judge of Nellore was requested to order that the execution of the decree in Original Suit No 21 of 1895 might be suspended until the further orders of the District Munsif of Kavali. The District Judge of Nellore on receiving the notice gave effect to the prohibitory order. This was either on the 8th or the 10th December 1900. It also appears from the Execution Petition No. 183 of 1904 of the counter-petitioner Annamala Chetty Pichayya that he also obtained, on the 8th December 1900, a similar order before judgment attaching that very decree of Krishnam Ramasamy. Krishnam Ramasamy's decree was then executed, and the property of his judgment-debtors was sold on the 3rd October 1904, and the purchase money paid into Court on the 18th October 1904. The sale was confirmed on the 6th December 1904.

VEERAYYA
v.
ANNAMALA
CHETTY.

I ought to have mentioned that Krishnam Ramasamy was not the only decree-holder in Original Suit No. 21 of 1895 but had a fourth share in the decree, and, therefore, a fourth share in the sale-proceeds of the property sold under it, which amounted in all to Rs. 5,140. Besides the petitioner several other persons had decrees for money against Krishnam Ramasamy; and the petitioner by his petition under section 622, Civil Procedure Code, seeks to set aside the order of the District Judge of Nellore refusing to allow him to participate in a rateable distribution under section 295, Civil Procedure Code, of the fourth share of Krishnam Ramasamy, the common judgment-debtor in the sum of Rs. 5,140 standing to his credit in the Nellore District Court. The reason why the petitioner has not been allowed to come in and take his share is that he made his application for attachment of the amount on the 25th October 1904, while it had been "realized," as held by the District Judge, within the meaning of section 295, Civil Procedure Code, on the 18th October 1904. Only those decree-holders were admitted to a rateable distribution who had applied for execution before the latter date.

But, the facts I have stated show that, the decree of Krishnam Ramasamy in Original Suit No. 21 of 1895 was already under attachment at the instance of both the present petitioner and the counter-petitioner Annamala Chetty Pichayya made in

VERAYYA
 v.
 ANNAMALA
 CHETTY.

anticipation of judgment, and, that at any rate under the prohibitory order obtained by the petitioner, the attachment was to continue until the further order of the Munsif's Court of Kavali. In the absence therefore of anything appearing to the contrary, I must take it in the first place that the fourth share of Krishnam Ramasamy in the Rs. 5,140, came into Court under the stress of these attachments or of one of them by virtue of section 490, Civil Procedure Code read with section 273, Civil Procedure Code. This is clearly indicated in Execution Petition No. 183 of 1904 of the counter-petitioner Annamala Chetty Pichayya. Section 490, Civil Procedure Code, lays down that, when there has been an attachment before judgment, the plaintiff in the suit if he gets a decree need not again attach the same property in execution. The language of the section is clear, and explicit; and the case of *Srinivasa Ayyangar v. Seetharama Ayyar*(1) which the executing Court relies on does not lay down anything different. The attachment before judgment made at the instance of the petitioner therefore subsisted at the time of the sale, and the fact that he made a further application for payment on the 25th October 1904, should not affect the question.

The amount in question having been realised in execution of the decree against the judgment-debtor Krishnam Ramasamy as contemplated by section 295, Civil Procedure Code, the fact that it represented the sale-proceeds of the property of Krishnam Ramasamy's judgment-debtors sold under the decree makes no difference in this respect. The hold otherwise would be to exclude from the application of the very equitable provisions of section 295, Civil Procedure Code, a large class of cases for no apparent valid reason.

It is also urged in support of the executing Court's order that the attachment of Krishnam Ramasamy's decree before judgment was a nullity, because only property within the jurisdiction of the Munsif's Court of Kavali could be so attached. Supposing that to be a correct statement of the law, which I do not think it is, it has not been shown that the property attached in this case was not in fact within the territorial jurisdiction of the Munsif's Court of Kavali. But it seems to me as held by Sale, J., in *Ram Perab Showar v. Madho Rai*(2) that, under section 648, Civil

(1) I. L. R., 19 Mad., 72.

(2) 7 O. W. N., 216.

Procedure Code, even property outside the jurisdiction of the Court in which a suit is pending, can be attached by that Court in anticipation of its judgment.

VEERAYYA
v.
ANNAMALA
CHETTI.

The petitioner is thus entitled to a rateable share in the sum of Rs. 1,207-8-0, the amount available in Original Suit No. 21 of 1895, along with those other decree-holders of Krishnam Ramasamy whose claims to rateable distribution have been admitted by the District Judge of Nellore, and I direct accordingly. The order of the District Judge, dated 23rd December 1904, refusing the petitioner's application for a rateable distribution will therefore be set aside. The petitioner is entitled to the costs of this petition.

APPELLATE CIVIL.

Before Mr. Justice Sankaran-Nair and Mr. Justice Abdur Rahim.

MUNIAPPAN CHETTI (SIXTH DEFENDANT), APPELLANT,

v.

BALAYAN CHETTI (PLAINTIFF), RESPONDENT.*

1908
August 3, 4.

Civil Procedure Code, Act XIV of 1882, s. 108—Section applies to a defendant who has filed written statement.

A defendant who had filed a written statement, but had not appeared at the hearing is entitled to apply under section 108 of the Code of Civil Procedure to set aside the decree passed against him.

THE facts are sufficiently set out in the judgment.

T. R. Venkatrama Sastrî for The Hon. the Advocate-General for appellant.

K. Narayana Rao for respondent.

JUDGMENT.—The appellant, the sixth defendant, filed a written statement, but failed to appear at any adjourned hearing, and a decree was passed against him in his absence. He has now applied under section 108, Civil Procedure Code, to set aside the decree passed, *ex parte*, against him. Following the decisions in *Ramanuja Reddiar v. Rangaswami Aiyangar* (1), *Jonardan Dobby v.*

* Appeal No. 8 of 1908, presented under section 15 of the Letters Patent against the judgment of Mr. Justice Muoro, dated 10th January 1908, in Civil Revision Petition No. 292 of 1907.