

## APPELLATE CIVIL.

Before Mr. Justice Munro and Mr. Justice Abdur Rahim.

SADAGOPA CHARARIAR (PLAINTIFF), APPELLANT,

v.

RAGHUNATHA CHARARIAR AND OTHERS (DEFENDANTS),  
RESPONDENTS.\*

1909.  
August  
25, 26.  
September  
28.

*Decree, transfer of--Transfer takes effect from date of transfer and not from date of its recognition by Court.*

Where a decree is transferred by an instrument in writing, such transfer takes effect from the date of such instrument and not from the date of its recognition by the Court.

*Puthiandi Mammed v. Avail Moidin*, [(1897) I.L.R., 20 Mad., 157], considered.

The transfer of a decree may, in the absence of a contract to the contrary, be regarded as conditional upon the Court granting the transferee permission to execute. The transferee, before repudiating the transfer, is bound to do all that is reasonably necessary to obtain such permission.

SECOND APPEAL against the decree of F. D. P. Oldfield, District Judge of Tanjore, in Appeal Suit No. 821 of 1906, presented against the decree of K. S. Lakshmi Narasiyer, District Munsif of Valangiman, in Original Suit No. 271 of 1905.

The facts for the purpose of the report of this case are sufficiently set out in the judgment.

*S. Srinivasa Ayyangar* and *N. R. K. Thathachariar* for appellant.

The Hon. The Advocate-General and *T. Gopaladesika Chariar* for second and third respondents.

*T. Rangaramanuja Chariar* for first respondent.

JUDGMENT.—The only question which need be considered is whether the suit is maintainable. The first defendant owed money to the plaintiff. To discharge the debt the first defendant on the 28th January 1904, transferred to the plaintiff by assignment in writing under exhibit B, the decrees in Original Suits Nos. 61 and 62 of 1902 on the file of the District Munsif's Court of Valangiman. On the 22nd April 1904 these decrees were attached before judgment by the Subordinate Judge's Court of Kumbakonam in a suit brought by a third party against the first defendant. The plaintiff did not apply for execution of the decrees

\* Second Appeal No. 1289 of 1907.

until 1905. His application to the District Munsif of Valangiman in respect of the decree in Original Suit No. 61 was dismissed on the 27th March 1905 on the ground that the decree had been attached by the Subordinate Judge's Court. The application in respect of the decree in Original Suit No. 62 was put in on the 13th July 1905, and was dismissed by the District Munsif on the 18th July, because the plaintiff's pleader did not press it. On the 27th July 1905 the plaintiff repudiated the assignment under exhibit B, and then brought the suit, out of which the second appeal arises, to recover the original debt. The District Munsif gave the plaintiff a decree, but the District Judge dismissed the suit. Under section 486, Civil Procedure Code (Act XIV of 1882) an attachment before judgment is effected in the manner provided for the attachment of property in execution of a decree for money. When therefore the decrees in Original Suits Nos. 61 and 62 on the file of the District Munsif were attached before judgment by the Subordinate Judge's Court, the District Munsif was bound under the second paragraph of section 273, Civil Procedure Code (Act XIV of 1882) to stay execution until the attachment was cancelled. The District Munsif dismissed the plaintiff's application for execution not on any ground affecting the validity of the transfer of the decrees, but simply because he had no power at the time to allow execution. The plaintiff was not, however, left without a remedy. Under section 487, Civil Procedure Code (Act XIV of 1882) it was open to him to present a claim to the attaching Court, and, if he had done so and had established his transfer, it would have been the duty of the attaching Court to withdraw the attachment, in which case it would have been open to the plaintiff to apply again under section 232, Civil Procedure Code (Act XIV of 1882) for the execution of the decrees. We say it would have been the duty of the attaching Court to withdraw the attachment in the case supposed, because by the assignment in writing the property in the decrees passed to the plaintiff, so that the decrees were no longer liable to be attached as the property of the first defendant.

It has been suggested on the strength of certain observations in *Puthiandi Mammed v. Avalil Moidin*(1), that the property in the

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decrees had not passed to the plaintiff prior to the attachment before judgment, because he had not obtained permission to execute the decrees under section 232, Civil Procedure Code (Act XIV of 1882). We do not think it necessary to read the decision in the case quoted as laying down—a thing it does not do in plain terms—that when a decree has been transferred by assignment in writing the property in the decree does not pass to the transferee at the time of the assignment, but passes only after the transfer has been recognised by the Court. If, however, the learned Judges did intend to lay down such a proposition, we should, with great respect, be unable to agree with them. There is nothing in section 232, Civil Procedure Code, to suggest anything of the kind. On the other hand it can be gathered from the section itself that the completion of the transfer does not depend upon any recognition by the Court, for it begins by saying “If a decree be transferred by assignment in writing,” thus assuming that there has been a complete transfer. In *Badri Narain v. Jaikishen Das*(1) it was held that a person who, within the meaning of section 232, Civil Procedure Code, is a transferee of a decree is a representative within the meaning of section 244, Civil Procedure Code, *quâ* the decree, of the party to the suit under whom he, by assignment in writing, has derived title to the decree, and that it is the assignment in writing, and not the recognition by the Court, which makes such transferee a representative of a party to the suit. This decision was followed by this Court in *Virasami Rowth v. Boli Naikam*(2) which was approved in *Subbuthayammal v. Chidambaram Asari*(3).

Now there can be no doubt that the plaintiff having taken the assignment under exhibit B in discharging of the debt due to him, was not entitled to repudiate it without good cause. When the decrees were attached before judgment, it was his property that was attached, and it was clearly his duty when he became aware of the attachment to take steps to have the attachment removed by presenting a claim to the attaching Court on the strength of exhibit B. No doubt the transfer of a decree may, in the absence of anything to the contrary, be regarded as conditional upon the Court granting permission to the transferee to execute and it

(1) (1894) I.L.R., 16 All., 483.

(2) C.M.S.A., No. 60 of 1899 (unreported).

(3) (1902) I.L.R., 25 Mad., 383.

seems to us that it was upon this principle that *Puthiandi Mammed v. Avatil Moidin*(1) was decided. The transfer in that case was not recognised by the Court and the plaintiff was in consequence unable to obtain the full fruits of the assignment to him. But the transferee is bound to do all that is reasonably necessary in order to obtain the permission of the Court. Until he had at least preferred a claim to the attaching Court and that had been rejected, the plaintiff was not entitled to treat the assignment under exhibit B as ineffectual. We therefore think the suit is not maintainable and dismiss the appeal with costs.

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## APPELLATE CIVIL.

*Before Mr. Justice Munro and Mr. Justice Sankaran-Nair.*

DAVID NADAR (PLAINTIFF), APPELLANT,

v.

MANIKKA VACHAKA DESIKA GNANA SAMBANDA  
PANDARA SANNADI (DEFENDANT), RESPONDENT.\*

1909.  
July 7, 8.  
August 19.

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*Review—Power of Collector to review his own order.*

The Collector has no power to review his own order refusing to interfere with an order passed by his subordinate, confirming a sale for arrears of land revenue.

SECOND APPEAL against the decree of H. Moberly, District Judge of Tanjore, in Appeal Suit No. 1336 of 1905, presented against the decree of C. S. Mahadeva. Iyer, District Munsif of Shiyali, in Original Suit No. 300 of 1904.

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

*T. Ranguchariar, B. Panchapagesa Sastry and R. Kuppusami Ayyar* for appellant.

*T. Narasimha Ayyangar* for respondent.

JUDGMENT.—The suit lands were purchased by the plaintiff at an auction sale for arrears of revenue on the 12th June 1901. The sale was confirmed by the Deputy Collector on the 16th

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(1) (1897) I.L.B., 20 Mad., 157.

\* Second Appeal No. 651 of 1906.