APPELLATE CIVIL.

Before Mr. Justice Wallace and Mr. Justice Madhavan Nayar.

VENKATASUBBA MUDALI AND ANOTHER (DEFENDANTS 1 AND 2), APPELLANTS

1925, December 7.

v.

MANICKAMMAL AND ANOTHER (2ND AND 3RD PLAINTIFFS), RESPONDENTS.*

Civil Procedure Code (Act V of 1908), sec. 47—Decree—Execution—Pre-decree arrangement between the parties that the decree was not to be executed—Bar to execution—Pre-decree arrangement to postpone execution—Principle of decision to be applied in such cases, whether same—Stare decisis.

A pre-decree arrangement, by which a decree was not to be executed, can be pleaded in bar of execution of the decree.

The principle of the Full Bench decision in *Chidambara Chettiar* v. *Krishna Vathiar*, (1917) I.L.R., 40 Mad., 233, is applicable to a case not merely of a pre-decree arrangement by which the execution of the decree was to be postponed for a time, but also to a case where execution was absolutely prohibited.

Case law reviewed.

APPEAL against the decree of L. C. HORWILL, District Judge of Chingleput, in E.P. No. 45 of 1924, in O.S. No. 21 of 1920.

The decree-holders, who had obtained a final decree in a suit for sale on a mortgage, applied under Order XXI, rules 66 and 72, Civil Procedure Code, that the mortgage property might be sold to recover the decree amount. The judgment-debtor set up an arrangement prior to the preliminary decree as an adjustment of the decree in bar of execution. The learned District Judge held that the adjustment not being embodied in the

* Appeal against Order No. 270 of 1925.

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decree could not be recognized, relying on the decisions in *Mallayya* v. *China Kotayya*(1), *Ramanathan Chettiar* v. *Venkatachalam*(2) and *Singa Raja* v. *Pethu Raja*(3), and directed the sale. The judgment-debtor appealed.

K. Bashyam Ayyangar for appellant.

T. R. Ramachandra Ayyar for respondent.

JUDGMENT.

WALLACE, J.

WALLACE, J.—The point for decision is whether it is open to a judgment-debtor to plead in bar of execution of a decree against him a pre-decree arrangement that the decree was not to be executed. The Lower Court has held that it was not so open to him, relying on three decisions of this Court, which in my view, so far as they may be used to support this view, run counter to the general trend of decisions in this Court. The most important decision on this point is the Full Bench case in *Chidambaram Chettiar* v. *Krishna Vathiyar*(4). The question referred to the Full Bench there was whether a pre-decree arrangement to postpone the execution of a decree *for a certain time* can be pleaded as a bar to immediate execution. Two learned Judges of the Full Bench held that it could, and another learned Judge differed. The former based their decisions on the principle of *stare decisis*, the previous cases relied on by them and on which they elected to stand, being *Rama Ayyan* v. *Sreenivasa Pattar*(5), *Rukmani Ammal* v. *Krishnamachari*(6), *Krishnamachariar* v. *Rukmani Ammal*(7), and *Subramanya Pillai* v. *Kumaravelu Ambalam*(8). Now, curiously enough, it was not noticed and has been overlooked also in other judgments on this

(1) (1921) 14 L.W., 317.
(2) (1923) 17 L.W., 635.
(3) (1918) 35 M.L.J., 579.
(4) (1917) I.L.R., 40 Mad., 233 (F.B.).
(5) (1896) I.L.R., 19 Mad., 230.
(6) (1905) 9 M.L.T., 464.
(7) (1905) 15 M.L.J., 370.
(8) (1916) I.L.R., 39 Mad., 541.

matter that *Rama Ayyar* v. *Sreenivasa Pattar*(1) is not really in point. The agreement in that case was post-decree and not pre-decree. The other three cases lay down in general terms the principle that a pre-decree arrangement that a decree, when obtained, should not be executed, can be pleaded in bar of execution. *Rukmani Ammal* v. *Krishnamachari*(2) and *Subramanya Pillai* v. *Kumaravelu Ambalam*(3) follow the Full Bench ruling in *Laldas* v. *Krishdas*(4). No previous authority was quoted in *Krishnamachariar* v. *Rukmani Ammal*(5). It is clear that these cases lay down a principle wider than the principle raised in the question referred to the Full Bench. In the Full Bench case, the question was whether a pre-decree arrangement for a temporary postponement of execution can be pleaded; while, in the three cases above quoted, the general principle was that a pre-decree arrangement not to execute at all can be pleaded. The concurring judgment in the Full Bench proceeded however on the footing that this general principle adopted furnishes the answer to the question raised, although it was not necessary for the decision to go so far as the three cases above quoted. I have no doubt that the concurring Judges did intend to take their stand on the wider principle enunciated in these cases and that they meant to uphold and confirm that principle and lay down that this Court in doing so was proceeding on the principle of *stare decisis*.

Subsequently to the 40 Madras case, there have been two divergent lines of decisions. One follows the general principle already stated, for example, *Sambasiva Ayyar* v. *Thirumalai Ramanuja Thathachariar*(6) in which it is adopted in clear terms as inherent in and

(1) (1896) I.L.R., 19 Mad., 230.
(2) (1905) 9 M.L.T., 464.
(3) (1916) I.L.R., 39 Mad., 541.
(4) (1898) I.L.R., 22 Bom., 463 (F.B.).
(5) (1905) 15 M.L.J., 370.
(6) (1919) 37 M.L.J., 356.

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flowing from the Full Bench decision; and *Velu Thevan* v. *Krishnaswami Reddi*(1) to which one of us was a party. The other set of cases springs from the ruling in *Arumugam Pillai* v. *Krishnaswami Naidu*(2) but, before that is considered, reference may be made to the case in *Singa Raja* v. *Pethu Raja*(3). That case turned on a rather strict interpretation of Order XXXIV and not on this general principle, and no reference was made either to the 40 Madras or 43 Madras case. In 43 Mad., 725, which was decided in 1920, one learned Judge held that 40 Madras "does not oblige us to extend the principle to the extent required by the appellants' contention." I would point out that the one case referred to by the learned Judge, OLDFIELD, J., as the only case appearing in the authorized reports supporting the appellants' contentions before him is the 19 Madras case, which, as I have observed, has no application to a pre-decree arrangement; while the learned Judge has overlooked the 39 Madras case.

Next comes the case in *Mallayya* v. *China Kotayya*(4) which really seems to me hardly in point. It was a case of pre-suit, and not of a pre-decree, arrangement, which the learned Judges held could and should have been pleaded as an absolute defence to the suit. This was sufficient for the disposal of the case but the learned Judges went on to consider the general question of the right of a party to plead a pre-decree arrangement in bar of execution, and referred to the cases already quoted. The Full Bench case is put aside on the ground set out in the 43 Madras case, but it is quoted at the end of the judgment as supporting the plea that the agreement in that suit could not be pleaded in bar of execution. It is clearly a case distinguishable

(1) (1925) 48 M.L.J., 277.
(2) (1920) I.L.R., 43 Mad., 725.
(3) (1918) 35 M.L.J., 579.
(4) (1921) 14 L.W., 317.

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from the 40 Madras case. The next case is *Ramanatham Chettiar* v. *Venkatachalam*(1) passed in 1923 which was decided on the ground that the agreement there pleaded was more similar to the one in 43 Madras than to that in 40 Madras. In this divergence of authority I think we are bound to follow the Full Bench ruling, which does undoubtedly adopt and follow the general principle laid down in *Rukmani Ammal* v. *Krishnamachari*(2), *Krishnamachariar* v. *Rukmani Ammal*(3) and *Subramania Pillai* v. *Kumaravelu Ambalam*(4) and hold to the principle which has been followed since 1903 until it was doubted in the 43 Madras case. It is essential that, in such matters, there should be uniformity of procedure, and I see no reason to refer the case again to a Full Bench as we have been requested to do.

We must therefore reverse the decision of the District Judge and direct him to re-hear the case. Costs up to date will abide the result.

MADHAVAN NAYAR, J.

MADHAVAN NAYAR, J.—I concur with my learned brother throughout in his judgment. I have not been convinced by the arguments of Mr. T. R. Ramachandra Ayyar that the decision in *Velu Thevan* v. *Krishnaswami Reddi*(5) to which I was a party does not lay down the correct law. It was held in that case that a judgment-debtor could plead in bar of an execution a pre-decree arrangement between him and the decree-holder that the decree should not be executed. That decision was based upon the Full Bench ruling in *Chidambaram Chettiar* v. *Krishna Vathiyar*(6). The decisions in *Krishnamachariar* v. *Rukmani Ammal*(3), *Rukmani Ammal* v. *Krishnamachari*(2) and *Subramania Pillai* v. *Kumaravelu Ambalam*(4) which lay down the general principle that an arrangement prior to a decree not to execute the decree at all

(1) (1923) 17 L.W., 635.
(2) (1905) 9 M.L.T., 464.
(3) (1905) 15 M.L.J., 370.
(4) (1916) I.L.R., 39 Mad., 541.
(5) (1925) 48 M.L.J., 277.
(6) (1917) I.L.R., 40 Mad., 233 (F.B.).

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can be pleaded in bar of an execution furnished the ground for the decision in the Full Bench case. These cases laid down a principle wider than the one raised in the question referred to the Full Bench. There can be no doubt that the learned Judges who decided the case in *Chidambaram Chettiar* v. *Krishna Vathiyar*(1) accepted the principle of these three cases as correct law. The decision mainly relied upon by Mr. Ramachandra Ayyar, *Arumugam Pillai* v. *Krishnaswami Naidu*(2), as pointed out by my learned brother, refers to *Rama Ayyar* v. *Sreenivasa Pattar*(3) which has no application to a pre-decree arrangement and overlooks the decision in *Subramania Pillai* v. *Kumaravelu Ambalam*(4) and apparently brushes aside the decisions mainly relied upon in the Full Bench case on the ground that they do not appear in the authorized reports. The other decisions quoted for the respondent, namely, *Singa Raja* v. *Pethu Raja*(5), *Mallayya* v. *Chinna Kotayya*(6), and *Ramanathan Chettiar* v. *Venkatachalam*(7) do not advance his contentions in any appreciable degree.

In this state of the authorities, I agree with my learned brother that we are bound to follow the Full Bench ruling and reverse the decision of the District Judge and request him to re-hear the case. The costs up to date will abide the result.

K.R.

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(1) (1917) I.L.R., 40 Mad., 233 (F.B.). (2) (1920) I.L.R., 43 Mad., 725.
(3) (1869) I.L.R., 19 Mad., 230. (4) (1916) I.L.R., 39 Mad., 541.
(5) (1918) 35 M.L.J., 579. (6) (1921) 14 L.W., 317.
(7) (1923) 17 L.W., 635.