APPELLATE CIVIL—FULL BENCH.

Before Sir Murray Coutts Trotter, Kt., *Chief Justice*, *Mr. Justice Beasley and Mr. Justice Srinivasa Ayyangar.*

BHAVIRISETTI LAKSHMINARASIMHAM (PETITIONER), APPELLANT,

1927, January 5.

v.

VETCHA LAKSHMINARASIMHAM AND FOUR OTHERS (RESPONDENTS), RESPONDENTS. *

*Civil Procedure Code (Act V of 1908), sec. 64 and O. XXI, r. 53 (6)—Attachment of a decree, when complete and effective—Notice to judgment-debtor under rule 53 (6), whether necessary for completion of attachment—Service of notice on Court which passed the decree, necessary for completion of attachment—*Bona fide *payment by judgment-debtor without notice of order of attachment, whether valid.*

Notice under Order XXI, rule 53 (6), Civil Procedure Code, to the judgment-debtor of an attached decree, is not necessary for the purpose of completing the attachment of the decree; the attachment is effectuated by the service of notice on the Court which passed the decree.

Rule 53 (6) merely provides, in cases of *bona fide* transactions by judgment-debtors, an exception to the general rule embodied in section 64, which invalidates alienations, payments and adjustments as against claims enforceable under the attachment.

If, therefore, the judgment-debtor of the attached decree had no notice of the order of attachment at the time when the payment and adjustment pleaded were made, then even though the attachment had already become complete and effective, the payment and adjustment should be recognized by the Court.

APPEAL against the order of the Subordinate Judge of Guntūr, in Appeal No. 3 of 1924 preferred against the order of the Additional District Munsif of Guntūr, in E.P. No. 62 of 1922 in O.S. No. 327 of 1921.

* Appeal against Appellate Order No. 102 of 1924.

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The material facts appear from the following Order of Reference to a Full Bench passed by WALLACE and MADHAVAN NAYAR, JJ.:—

ORDER OF REFERENCE TO A FULL BENCH.

"The question for decision in this appeal is simple, but the answer is difficult. The question is, when does an attachment under Order XXI, rule 53, Civil Procedure Code, by a Court of a decree passed by another Court become operative and bring the provisions of section 64, Civil Procedure Code, into force? Rule 53 is so loosely drafted that we can see no less than six possible answers to this quetion: (1) when the attaching Court signs the notice under rule 53 (1) (*b*); (2) when it actually issues that notice; (3) when that notice reaches the Court which passed the decree; (4) when the notice prescribed by sub-section (6) to be given to the judgment-debtor is signed; (5) when that notice is issued, and (6) when that notice is served on the judgment-debtor or given to him. Answers (1) and (4) may be dismissed at once. It has never been held by this Court and would be contrary to common sense to hold, that a mere signing without promulgation or issue of the order or notice can operate to effect an attachment. Answer No. (2) also seems opposed to common sense. If the Court which passed the decree is to be prohibited from doing something, the natural commencement of the prohibition would be the time when the prohibition reaches it and it is aware of the prohibition. Until it is aware of the prohibition there is no reason why it should stay its hand. As to No. (3), the main question is whether the rule contemplates that the order of attachment does not become operative until the notice spoken of in sub-section (6) should also have gone out, that is, whether the attachment is effected by the receipt of a notice under sub-section (1) (*b*) by the Court which passed the decree *plus* the giving of a notice under sub-section (6) to the judgment-debtor. If the answer is "no" then answers Nos. (5) and (6) do not arise. If the answer is "yes" then they have to be further considered. We shall, therefore, direct our attention first to this point.

The language of the rule is, the attachment shall be made by the issue to the Court which passed the attached decree "of a notice by the Court which passed the decree sought to be executed," and textually implies that when that notice is issued; (or is, as we hold, received by the Court which passed the

attached decree) the attachment is "made" that is, takes effect. But there is a good deal to be said for the argument that the rule has to be read as a whole, and that when the rule also prescribes other necessary proceedings to be carried out, these also have to be carried out before the attachment takes effect. Rule 54, for example, says that the attachment shall be made by an order prohibiting the judgment-debtor from doing so and so, and it also goes on to say that that order "shall be proclaimed," and it has been held, and, if we may say so with respect, rightly held, by this Court that until the order has been so proclaimed the attachment does not take effect. (*Ramanayakudu* v. *Boya Pedda Basappa*(1), which has been approved in a Full Bench ruling in (*Sinnappan* v. *Arunachalam Pillai*(2)). In the Division Bench ruling, the learned Judges say "We think that, in order to make the order prohibitive, the person prohibited must have the opportunity afforded by the publication mentioned in clause (2) of rule 54 of knowing that he is so prohibited."—[*Note.*—We have looked up the original record and find that the word "application" as printed is a misprint for "publication".] So that, before the attachment under section 54 becomes operative, the prohibition must have been brought to the notice of the person prohibited.

This principle, will not, however, carry us further than this, that when it is laid down that an attachment has to be made by a prohibitory order, that attachment takes effect from the time when that order is brought to the notice of the person prohibited. Under rule 53 the attachment is made by a prohibitory order to the Court which passed the decree and it would not come into effect therefore until that order has reached the Court. But the rule does not go further and say that the notice to the judgment-debtor under sub-section (6) is a part of the machinery by which the attachment is to be made. The sub-section speaks of a separate notice for which a special application *ad hoc* is to be made and which is not said to be requisite before the attachment is made. A point worth noting is that though sub-section (6) was a new introduction into the Code of 1908 no *form* of notice under it has been added to the forms at the end of the first schedule. The essence of the attachment under rule 53 appears to be the prohibitory order to the Court which passed the decree, and not any notice either to the decree-holder or to the judgment-debtor of the attached decree, and the Court which passed the

(1) (1919) I.L.R., 42 Mad., 565. (2) (1919) I.L.R., 42 Mad., 844 (F.B.).

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decree, on receiving the prohibitory order, is bound to refuse to execute the decree for the benefit of the decree-holder of the attached decree. On receipt of that prohibitory order by the Court which passed the decree, the attachment takes effect, and it follows from section 64 that then no payment made by the judgment-debtor of the attached decree to the decree-holder shall be recognized as against the claims of the attaching decree-holder under the attached decree. In this view sub-section (6) would seem to be not only superfluous but misleading, and this is a strong argument against it.

The language of the sub-section certainly warrants a contention that, if payments and adjustments of the attached decree made by the judgment-debtor *after* receipt of the notice under it shall not be recognized by any Court, then such payments or adjustments made *before* the receipt of the notice should be recognized. But such an interpretation would obviously conflict with section 64, if the attachment is effected as soon as the notice under sub-section (1) is served on the Court which passed the decree. It may be that sub-section (6) which is a new sub-section, was introduced with reference to rule 2 of Order XXI. See *Gopal Nanashet* v. *Joharimal*; and *Dada Balshet* v. *Joharimal*(1). If the sub-section were not there, then the judgment-debtor of an attached decree making a payment at any time under the attached decree could claim that that payment should be recorded and certified under rule 2 and therefore should be recognized by the Court.

On the other hand, to hold that the attachment has no effect until the notice in sub-section (6) had been served on the judgment-debtor of the attached decree, would imply, first, that under rule 53, clause 2, the Court which passed the decree could go on executing it for the benefit of the attaching decree-holder although there was no attachment in force, and secondly, that the Court which passed the decree, which had received a prohibitory order that it was not to allow execution of the decree, would nevertheless be bound to execute it unless and until a notice under sub-section (6) had been given to the judgment-debtor. These are absurd positions for the Court to be put in. It is argued that if the judgment-debtor of the attached decree comes to the Court which passed the decree and endeavours to make a payment under the decree to his own

(1) (1892) I.L.R., 16 Bom., 522.

decree-holder the Court itself would bring the attachment to his notice, and therefore he would have had notice of it. But that would not be a compliance with sub-section (6) because the notice there has to be one made on an application by the attaching decree-holder. Further, sub-section (6) does not say that any notice is to go to the decree-holder of the attached decree, and if he applies to execute his decree, the Court, which *ex hypothesi* has received an order prohibiting it from executing, nevertheless, would have to execute it, unless and until it is informed that the attaching decree-holder has taken out in the Court making the attachment the notice under sub-section (6). That again seems an absurd position. Again the decree-holder and the judgment-debtor of the attached decree might go on adjusting the decree out of Court. The decree-holder hearing that there has been an attachment and therefore that he is not going to get any benefit for himself from the decree might even give up his claims under the decree out of Court and declare the decree satisfied, although there was a prohibitory order to the Court which passed the decree directing that the decree shall not be executed. On the other hand, it seems anomalous that a prohibitory order known *ex hypothesi* only to the Court which passed the decree and not to the parties to that decree should operate to bar payments or adjustments of the decree even out of Court, and it has to be admitted that in most other attachments under Order XXI some form of information of the prohibitory order to the party prohibited is provided for.

Of reported rulings directly on the point there are very few in this Court: in fact, we have traced only two and these are directly at variance. In *Kuppuswami Ayyar* v. *Kuppuswami Ayyar*(1) a Bench of this Court has held that a notice under sub-section (6) is not necessary for the effectual completion of the attachment. In *Nagu Reddiyar* v. *Veerappa Mudaliyar*(2) a single Judge deliberately refused to follow that view. We are ourselves inclined to adopt the view in *Kuppuswami Ayyar* v. *Kuppuswami Ayyar*(1) but recognizing that this is a point which must probably arise as an every-day occurrence in executing Courts, we think that it is necessary to refer the matter for the decision of a Full Bench. We accordingly do so, the question referred being, 'Is the notice under rule 53 (6) to the

(1) (1918) 24 M.L.T., 495. (2) (1921) 13 L.W., 34.

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judgment-debtor of the attached decree necessary before the attachment comes into force?' The Full Bench might also suggest, if they think fit, that rule 53 be amended so as to make it plain what it actually means. A notice to the decree-holder of the attached decree would probably meet the case better than a notice to his judgment-debtor."

ON THIS REFERENCE—

B. Somayya for appellant.—The attachment of the decree was effected on 5th January 1922 by service of notice on the Court which passed the decree. The attachment was complete. The judgment-debtor produced a receipt of payment to the decree-holder of the attached decree. The receipt is dated 6th January 1922. The payment or adjustment subsequent to the attachment is invalid under section 64 of the Code. Notice under rule 53 (6) to judgment-debtor is not necessary. Attachment is complete on service of notice on the Court which passed the decree. There was only an adjustment of the decree, not even payment after the attachment. Order XXI, rule 53 (6) only says payment by judgment-debtor after notice to him is bad, and says nothing about payment or adjustment before notice to judgment-debtor but after attachment; it does not say that payments so made after attachment are valid.

Ch. Ragava Rao for respondents.—Attachment is complete only after notice under Order XXI, rule 53 (6) is issued to the judgment-debtor. In any event, a *bona fide* payment by judgment-debtor, without notice to him of the attachment, under rule 53 (6), is valid and binding, notwithstanding the attachment. The principle of the Full Bench decision in *Sinnappan* v. *Arunachalam Pillai*(1) is applicable.

OPINION.

The question referred to the decision of the Full Bench in this case is as follows:

"Is the notice under rule 53 (6) to the judgment-debtor of the attached decree necessary before the attachment comes into force?"

The learned Judges who made the reference have also added,

(1) (1919) I.L.R., 42 Mad., 844 (F.B.)

"The Full Bench might also suggest, if they think fit, that rule 53 be amended so as to make it plain what it actually means. A notice to the decree-holder of the attached decree would probably meet the case better than a notice to his judgment-debtor."

The question propounded refers to rule 53 (6) of Order XXI of Schedule I, Civil Procedure Code. The learned Judges who have made the reference appear to have thought that there was a conflict of view between the decision in the case of *Kuppuswami Ayyar* v. *Kuppuswami Ayyar*(1) and that in *Nagu Reddiyar* v. *Veerappa Mudaliyar*(2). We do not understand the learned Judge in the latter case to have expressed any opinion with regard to the question of coming into force or completion of the attachment. It seems to us quite clear that that decision was based entirely on the construction of clause 6 of rule 53 of Order XXI, Civil Procedure Code. It is not however possible to agree with the view of ABDUR RAHIM, J., in the former case at page 497 that the words in the said clause "either through the Court or otherwise" refer to payment or adjustment and not to notice. The interpretation placed by the learned Judge on those words is opposed to all cardinal rules of construction. We are satisfied that the provision made in rule 53 (6) is only a special case of the application of a well-known principle of justice and equity intended for the protection of parties to a *bona fide* transaction without notice. Clause 6 above referred to has, in our judgment, nothing whatever to do with the completion or non-completion of the attachment or its coming into force.

Mr. Somayya for the appellant contended before us that clause (6) should be confined to the invalidation of payments and adjustments made by the judgment-debtor

(1) (1918) 24 M.L.T., 495. (2) (1921) 13 L.W., 34.

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under the decree attached after receipt by him of the notice and cannot be held by implication to validate such payments or adjustments made before the receipt of such notice. It is impossible to accede to such a contention. Indeed Mr. Somayya himself shrank from saying that actual payments in cash were not to be protected, but contended that adjustments stood on a different footing. We see no logic in this; provided they were made in good faith and without notice, payments and adjustments must stand or fall together. The necessary implication of the provision in clause 6 of rule 53 is that it is only after the judgment-debtor under the attached decree receives either through Court or otherwise notice of the order of attachment that any payment or adjustment made by him to his decree-holder will not be recognized by the Court and that therefore, if such judgment-debtor should in ignorance of such attachment have made any payment or adjustment, it should be regarded as a payment or adjustment properly made under the decree to the rightful person. No question can in such a case arise with regard to any payments not really made or any adjustments not *bona fide* effected. We are inclined to agree with the view taken by ABDUR RAHIM, J., in *Kuppuswami Ayyar* v. *Kuppuswami Ayyar*(1), that notice to the judgment-debtor of the attached decree under rule 53 (6) is not necessary for the purpose of completing the attachment and that the attachment is complete before any such notice is issued. Rule 53 (1) provides that the attachment of a decree shall be made, if the decree sought to be attached was passed by another Court, then by the issue to such other Court of a notice in the terms hereinafter referred to. There is no room for any doubt or

(1) (1918) 24 M.L.T., 495.

ambiguity in the language employed. The expression "by the issue to such other Court of a notice" is apt and sufficient to indicate that for the making of the attachment the notice should be to the Court which passed the attached decree. It cannot of course be contended that the moment a mere order of attachment is passed by the Court seeking execution the attachment becomes complete. The Code undoubtedly contemplates in all cases of attachment some kind of service or posting or publication or proclamation for the purpose of effectuating an attachment, and in the case of the attachment of a decree the form of effectuation provided is the service of notice on the Court which passed the attached decree. The decision of the Full Bench in *Sinnappan* v. *Arunachalam Pillai*(1), proceeded on a construction of rule 54 of Order XXI and only held that the proclamation prescribed in clause (2) of the rule was the mode in which the attachment ordered should be effected. The conclusion was based on the collocation of the clauses in the rule and the necessity in every case of the order made being served or promulgated. With reference to rule 53 we are unable to regard the provision in clause (6) for notice as a prerequisite for the completion of the attachment. But though on general principles after completion of the attachment any dealing in regard to the attached property is forbidden, it does not follow that persons who act *bona fide* without notice should in no case be protected. It has been strenuously contended by the learned vakil for the appellant that section 64, Civil Procedure Code, provides that

"when an attachment has been made, . . . any payment to the judgment-debtor of any debt, dividend or other

(1) (1919) I.L.R., 42 Mad., 844 (F.B.).

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moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment."

But the rules in the first schedule of the Procedure Code are under terms of section 121, Civil Procedure Code, made part of the Code itself and it therefore follows that clause (6) of rule 53 merely provides an exception to the general rule embodied in section 64. If, therefore, in the present case it has been found, as it appears to have been, that the judgment-debtor of the attached decree had no notice of the order of attachment at the time when the payment and adjustment pleaded were made, then it follows that even though the attachment had already become complete and effective, the payment and adjustment should be recognized by the Court and the question whether or not the notice provided for in clause (6) is necessary for the attachment being complete or coming into force, does not directly arise. But the question has been referred to our decision and we think that it logically follows from what we have said that the notice to the judgment-debtor referred to in rule 53 (6) of Order XXI, Civil Procedure Code, is not necessary to make the attachment come into force. In the view we have taken, rule 53 (6), Civil Procedure Code, is quite plain nor do we regard it as necessary or useful to suggest the desirability, by any new rule, of providing for notice to the decree-holder of the attached decree, because to do so would only be to afford further time and opportunity for fraudulent dealings with regard to attached decrees.

K.R.