

## APPELLATE CIVIL—FULL BENCH.

*Before the Hon'ble Mr. A. H. L. Leach, Chief Justice,  
Mr. Justice Varadachariar and Mr. Justice Mockett.*

1937,  
December 16.

MANIKKAM CHETTIAR (RESPONDENT-PLAINTIFF),  
PETITIONER,

v.

THE INCOME-TAX OFFICER, MADURA SOUTH, MADURA,  
AND ANOTHER (PETITIONER AND DEFENDANT), RESPONDENTS.\*

*Crown debt—Priority in respect of—Crown's right of—Enforcement of right by application under sec. 151, Civil Procedure Code (Act V of 1908)—Permissibility—Income-tax—Arrears of—Sale proceeds realised at sale of property of assessee in execution of decree obtained against him by a private party—Application by Income-tax Officer under sec. 151 of Code for payment of income-tax arrears out of—Maintainability of—Indian Income-tax Act (XI of 1922), sec. 46—Effect of.*

The petitioner obtained a money decree against one G and in execution thereof attached and brought to sale some movable properties of G. Income-tax due by G being in arrear, the Income-tax Officer applied to the executing Court under section 151 of the Code of Civil Procedure for an order directing the payment out to him from the sale proceeds when the sale took place of the amount due by G for arrears of income-tax. The execution sale was held in due course but only realised a sum less than that due for arrears of income-tax. After reserving the amount required for the costs of execution the executing Court ordered the balance to be paid out to the Income-tax Officer.

*Held by the Full Bench* that section 46 of the Indian Income-tax Act of 1922 was no bar to the application made by the Income-tax Officer and that the executing Court had power to order the payment out of the amount due to Government on mere application.

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\* Civil Revision Petition No. 1238 of 1935.

If the Crown is entitled to prior payment over all unsecured creditors, there is no reason why the Crown should not be entitled to apply to the Court for an order directing its debt to be paid out of monies in Court belonging to the debtor without having to file a suit. It must no doubt be a debt which is not disputed or is indisputable. The Crown is entitled to priority in respect of arrears of income-tax due to it and the demand of the Income-tax Officer is not open to question.

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The petitioner was not in the position of a secured creditor by reason of his having attached the properties.

PETITION under section 115 of Act V of 1908 and section 107 of the Government of India Act praying the High Court to revise the order of the Court of the District Munsif of Madura Town dated 2nd May 1935 and made in Miscellaneous Petition No. 523 of 1935 in Execution Petition No. 1482 of 1934 in Small Cause Suit No. 2116 of 1934.

The petition originally came on for hearing before VARADACHARIAR J. when his Lordship made the following

ORDER OF REFERENCE TO A FULL BENCH:—

Mr. Balasubramania Ayyar raised two questions before me in support of this revision petition. On one of them I feel little doubt; but the other point is one of some importance and, notwithstanding the reliance placed on behalf of the Government on the decisions in *Deputy Commissioner of Police v. Vedantam*(1) and *Soniram Rameshur v. Mary Pinto*(2), I think that it should be considered by a Division Bench or even by a Full Bench if the Chief Justice so directs.

This revision petition arises out of an application made by the Income-tax Officer of Madura South to the District Munsif of Madura Town, purporting to be under section 151, Civil Procedure Code, and praying that out of some monies in

(1) (1935) I.L.R. 59 Mad. 428. (2) (1933) I.L.R. 11 Ran. 467.

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the custody of that Court in the course of the execution of a decree obtained by the present petitioner against the assessee, the arrears of income-tax due by the assessee might be paid in the first instance. Two questions were raised before the lower Court on behalf of the present petitioner, viz., (i) whether the Government's claim was entitled to priority and (ii) whether, as a matter of procedure, the petition by the Income-tax Officer to the Civil Court was sustainable. On both those points the lower Court held against the present petitioner and directed payment to the Government in the first instance. Hence this revision petition by the decree-holder.

So far as the priority of the Government's claim is concerned, I see no reason to differ from the view taken by the lower Court. Mr. Balasubramania Ayyar relied on an expression of doubt in *Ramachandra v. Pitchaikanni*(1) as to the applicability in this country of the English doctrine relating to the priority of Crown debts; but I think the weight of authority in favour of the recognition of that priority even in this country is so strong that this expression of doubt cannot help the petitioner to any material degree; cf. *Deputy Commissioner of Police v. Vedantam*(2), *Varadachari v. Secretary of State for India*(3), *Gayanoda Bala Dassee v. Butto Kristo Bairagee*(4), *Soniram Rameshur v. Mary Pinto*(5) and the provisions in the Insolvency Acts relating to the priority of Crown debts.

It is on the question of procedure that I have felt some difficulty. Some of the cases above referred to arose out of applications on behalf of the Government to recover court-fees payable to Government in pauper suits. There is no difficulty in supporting the maintainability of the petition by Government in that class of cases, because the Civil Procedure Code treats the Government as a decree-holder to the extent of the court-fee payable and the ordinary procedure under the Code is available for the enforcement of that claim. In *Soniram Rameshur v. Mary Pinto*(5) the petition related to the recovery of income-tax, and in that sense the case is directly in point; but though the learned Judge gave a ruling

(1) (1884) I.L.R. 7 Mad. 434.

(2) (1935) I.L.R. 59 Mad. 428.

(3) (1935) I.L.R. 59 Mad. 872.

(4) (1906) I.L.R. 33 Cal. 1040.

(5) (1933) LL.R. 11 Ran. 467.

in favour of the maintainability of the petition, he also states that the application was not opposed on behalf of the respondents and that they consented to the payment. I am therefore unable to treat that decision as concluding the point. In *Deputy Commissioner of Police v. Vedantam*(1) CORNISH J. was dealing with a claim for arrears of motor tax; and, relying upon *In re Henley & Co.*(2) and on the decision in *Gayanoda Bala Dasse v. Butto Kristo Bairagee*(3), the learned Judge held that an application like the present must be treated as maintainable. *Gayanoda Bala Dasse v. Butto Kristo Bairagee*(3) is not strictly analogous, because it related to a claim for court-fee payable to Government in respect of which, as already observed, Government is in the position of a decree-holder. The proposition that the declaration of a first charge on the subject-matter of the suit does not preclude the Government from enforcing its claim as a decree-holder in other ways does not throw much light upon the question now raised before me. *In re Henley & Co.*(2) no doubt recognised the right of the Crown to proceed otherwise than in the manner pointed out by the Income-tax Act; but, in that case, the application was made in the course of liquidation proceedings and in liquidation proceedings, an application would be the proper form. The Indian Income-tax Act of 1922 makes detailed provisions in section 46 for the recovery of income-tax. Certain powers are given to the Collector and certain powers are given to the Income-tax Officer. I make no further reference to the provision relating to the Collector's powers because no application has been made in the present case by the Collector and the Act does not expect him to make an application but to exercise certain powers of his own. The Income-tax Officer is authorized under certain conditions to adopt the procedure available for the collection of arrears of municipal tax or local rate. Provision is also made in sub-clause 5 for a requisition to persons paying salaries to assesseees. It is a matter requiring consideration whether, in view of these detailed provisions having been made by the statute itself for the recovery of assessment, it is permissible to recognise in addition an application to the ordinary Civil Court which must *prima facie* be regarded as dealing only with the rights of litigants in the ordinary Civil Court. It may be that arrears of income-tax

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(1) (1935) I.L.R. 59 Mad. 428.

(2) (1878) 9 Ch. D. 469.

(3) (1906) I.L.R. 33 Cal. 1040.

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can be made the subject-matter of a regular suit as a Crown debt; but whether an application under section 151, Civil Procedure Code, or under any general principle of law was at all contemplated by the Income-tax Act or by the provisions of the Civil Procedure Code is a matter about which I entertain grave doubts, notwithstanding the respectful attention that I have given to the cases to which I have already referred. It is this point that I should like to be heard and decided authoritatively by a Bench subject to the order of the Chief Justice. The decision in Civil Miscellaneous Petition No. 2083 of 1933 affords me no guidance because there was in that case a distraint order issued by the Tahsildar under the provisions of the Revenue Recovery Act.

Pursuant to the aforesaid order of reference the petition came on for hearing before the Full Bench constituted as above.

#### ON THE REFERENCE:

*K. Balasubramania Ayyar* for *Watrap S. Subramania Ayyar* for petitioner.—The Crown really asks for two prerogatives in the present case: (i) priority and (ii) a special procedure for enforcing that priority. *Gayanoda Bala Dasse v. Butto Kristo Bairagee*(1) and other cases are relevant to the first point. They do not consider, and are not authority as regards, the second. Government must proceed by way of suit to enforce its right of priority and cannot enforce its right by an application under section 151, Civil Procedure Code. Ordinarily no debt can be enforced before a decree is obtained for it. Where property is seized in execution of a decree, that property cannot be got at by the Crown by means of a simple application. It must obtain a decree for its debt and then enforce the decree. Priority does not mean that the provisions of the Civil Procedure Code can be disregarded. Order XXI, rule 64, of the Code says that the Court shall pay to the party entitled to the money under the decree and the party entitled is the decree-holder. The Court has no option left to it. The prerogative of the Crown has been held not to apply to cases where execution is finished. If the money is paid to the decree-holder, then the Crown has no remedy even as regards its prerogative

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(1) (1906) I.L.R. 33 Cal. 1040.

right of priority. The Civil Procedure Code has to be applied even to the Crown in the absence of express provisions to the contrary. When the Crown seeks to avail itself of the ordinary remedies under the Civil Procedure Code, it is bound by the provisions of the Code just like a subject.

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[VARADACHARIAR J.—The real question is whether a specific disabling provision or a specific enabling provision is necessary. The language of clause 3 of section 73 of the Civil Procedure Code rather shows that a specific enabling provision is not necessary.]

There are other provisions in the Code showing that they apply to the Crown also.

[VARADACHARIAR J.—Those are cases in which the Crown comes as a suitor. In such cases it will no doubt be bound by the provisions of the Code. But does the Code compel the Crown to come as a suitor to enforce its right of priority?]

If the Crown was entitled to enforce its right of priority regardless of the provisions of the Code, then a provision like that in section 73 (3) would not be necessary.

[VARADACHARIAR J.—Section 73 is also a case where the Crown comes as a suitor.]

Cases relating to court-fees payable to Government in pauper suits are distinguishable, because the Civil Procedure Code treats the Government as a decree-holder to the extent of the court-fee payable and the fee payable to it has been made a first charge. Therefore an attaching decree-holder will be postponed. The Indian Income-tax Act of 1922 has in section 46 made detailed provisions for the recovery of income-tax. In view of these detailed provisions it is not permissible to recognise in addition an application to the ordinary Civil Court for the recovery of the tax. Income-tax is different from land revenue because in the case of income-tax the Crown cannot take the property of the assessee free from existing incumbrances. In *Soniram Rameshur v. Mary Pinto*(1) there was no contest and the point was not argued. Attachment having taken place, the petitioner must be treated as being in the position of a secured creditor. The Full Bench decision in *Kristnasawmy Mudaliar v. Official Assignee of Madras*(2) must be held to have been overruled by the decision

(1) (1933) I.L.R. 11 Ran. 467. (2) (1903) I.L.R. 26 Mad. 673 (F.B.).

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of the Judicial Committee in *Anantapadmanabhaswami v. Official Receiver, Secunderabad*(1).

*N. Srinivasa Ayyangar* for Government Pleader (*K. S. Krishnaswami Ayyangar*) for first respondent.—The Crown's right of priority is not confined to decree debts alone. The right of priority can be recognised by the Court even where an application is made. [The words "or otherwise" in Order XXI, rule 52, of the Civil Procedure Code were relied upon.] The present case can be held to come under that rule or under section 151 of the Code. *Soniram Rameshur v. Mary Pinto*(2) was followed in *Secretary of State v. Mu Nyein Me*(3).

### JUDGMENT.

LEACH C.J.

LEACH C.J.—The petitioner obtained a money decree against one Govinda Rao and in execution thereof attached certain movable properties belonging to the judgment-debtor and brought them to sale. Govinda Rao under an order of assessment dated 28th August 1934 was required to pay a sum of Rs. 301-13-0 by way of income-tax. He did not comply with the notice of demand for payment and on 12th November 1934 a penalty of Rs. 10 was imposed by the Income-tax Officer because of the default, thus increasing the total amount due by the assessee to Rs. 311-13-0. Before the sale, the Income-tax Officer filed an application in Court asking for an order directing the payment out to him from the sale proceeds when the sale took place of the amount due to Government by Govinda Rao. The sale in execution was in due course carried out, but only realised Rs. 227-9-0. After reserving the amount required for the costs of execution the District Munsif ordered the balance to be paid out to the Income-tax Officer. The question which we are called

(1) (1933) I.L.R. 56 Mad. 405 (P.C.). (2) (1933) I.L.R. 11 Ran. 467.  
(3) A.I.R. 1937 Ran. 380.

upon to decide is whether the Court had power to order the payment out of monies due to Government on mere application.

I had occasion to consider this question in the case of *Soniram Rameshur v. Mary Pinto*(1) when sitting as a Judge of the Rangoon High Court, and, following the decision of SALE J. in *Gayanoda Bala Dasse v. Butto Kristo Bairagee*(2), held that inasmuch as the Crown has priority over unsecured creditors in the payment of debts the Court can, on application and without a formal attachment being issued, order the payment of a Crown debt due by the debtor where there are funds in Court belonging to the debtor. The District Munsif referred to this decision in his order. The order which I passed in that case was passed by consent, and the only arguments were those addressed to the Court on behalf of the Crown, but the question has been fully argued before us to-day and I see no reason for changing the opinion there expressed.

It has been suggested that inasmuch as section 46 of the Indian Income-tax Act provides modes for the recovery of arrears of income-tax the Crown is not entitled to adopt any different method. Sub-section 2 states that the Income-tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector, on receipt of such certificate, shall proceed to recover from the assessee the amount specified as if it were an arrear of land revenue. Without prejudice to any powers of the Collector in this behalf he shall for the purpose of recovering the

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amount have in respect of the attachment and sale of debts due to the assessee the powers which under the Code of Civil Procedure a Civil Court has in respect of attachment and sale of debts due to a judgment-debtor for the purpose of the recovery of an amount due under a decree. By sub-section 3 it is provided that in any area in respect of which the Commissioner has directed that any arrears may be recovered by any process enforceable for the recovery of an arrear of any municipal tax or local rate imposed under any enactment for the time being in force in any part of the province, the Income-tax Officer may proceed to recover the amount due by such process. Under sub-section 5 if any assessee is in receipt of income chargeable under the head "Salaries" the Income-tax Officer may require the employer to deduct from his salary what is due by way of income-tax. This section, however, does not profess to be exhaustive and it cannot without express words to that effect take away from the Crown the right of enforcing payment by any other method open to it. Therefore I do not regard section 46 as imposing a bar to an application of the nature of the one we are now concerned with.

The learned Advocate for the petitioner then contends that as a private person cannot enforce payment without first obtaining a decree the Crown is in the same position. The argument is that a private person is governed by the provisions of the Code of Civil Procedure and as there is nothing in the Code which places the Crown in a different position the procedure there contemplated must be followed. I am unable to

agree. This argument ignores the special position of the Crown, the special circumstances and the Court's inherent powers. It cannot be denied that the Crown has the right of priority in payment of debts due to it. It is a right which has always existed and has been repeatedly recognised in India. If the Crown is entitled, as it is, to prior payment over all unsecured creditors—the position of secured creditors does not arise—I see no reason why the Crown should not be allowed to apply to the Court for an order directing its debt to be paid out of monies in Court belonging to the debtor, without having to file a suit. Of course it must be a debt which is not disputed or is indisputable. In this case the debt represents money due to the Crown under the Income-tax Act and the demand of the Income-tax Officer is not open to question.

What would be the effect if the Crown were not able to apply to the Court for the withdrawal of the money in a case like this? According to the argument it would mean that the Crown would have to file a suit against the debtor and the opposing creditor and then obtain an interim injunction preventing the money from being withdrawn from Court pending the decision of the suit. When the suit came on for hearing the Court would be bound to decree it. Therefore, there would be, not only a great waste of the time of the parties and of the Court, but the opposing creditor would run the danger of being mulcted in costs.

The Court must pay money in its hands out to the person entitled to it. If the Court were asked to pay out money to A with the certain knowledge that the money belonged to B it would

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naturally decline to do so and would make sure that B got it. Here, the Crown is entitled to the money in Court—there is no question about this—and asks the Court to pay it out. The right to payment being indisputable justice requires that it should be paid out to the Crown and formal application for payment has been made. It seems to me that both right and convenience demand that the Court should exercise its inherent power.

At one stage the learned Advocate for the petitioner suggested that the attachment having taken place the petitioner was in the position of a secured creditor. This argument is not open to him in view of the decision of a Full Bench of this Court in *Kristnasawmy Mudaliar v. Official Assignee of Madras* (1). He did suggest that this decision had been overruled by the Judicial Committee in *Anantapadmanabhaswami v. Official Receiver, Secunderabad* (2) but it is clear from a perusal of the report that their Lordships there refused to go into the question and reserved their decision for a future occasion. Consequently we have got to accept the decision in *Kristnasawmy Mudaliar v. Official Assignee of Madras* (1) as stating the law correctly and the petitioner is not in the position of a secured creditor.

The learned Advocate for the petitioner has also argued that unless there is some statute which expressly authorises a petition of this nature the petition cannot be maintained. I have in effect already dealt with this question and it follows from what I have said that I do not consider that a special Act of the Legislature is

(1) (1903) I.L.R. 26 Mad. 673 (F.B.). (2) (1933) I.L.R. 56 Mad. 405 (P.C).

required to enable the Crown to apply to the Court for payment out of money to which it has an undoubted right.

In the case of *Deputy Commissioner of Police v. Vedantam*(1) CORNISH J. took the same view. There, money was due to the Crown as arrears of tax under the Madras Motor Vehicles Taxation Act. The learned Judge also relied on the judgment of SALE J. in *Gayanoda Bala Dasse v. Butto Kristo Bairagee*(2).

For these reasons I am of the opinion that the District Munsif came to the correct conclusion and his order should not be disturbed. The petition will be dismissed with costs.

VARADACHARIAR J.—My doubts have been indicated in the order of reference. I am not able to say that they have been wholly dispelled. They are, however, not serious enough to warrant my dissenting from the conclusion which my Lord and my learned brother have reached on what is after all a question of procedure; even when making the reference, I felt no doubt as to the right of the Crown to priority. I may add that the balance of convenience certainly seems to be in favour of the view indicated in the judgment just delivered. I, therefore, agree with the order dismissing the petition with costs.

MOCKETT J.—I agree with my Lord the CHIEF JUSTICE. It must be remembered that the Court holds the money for the purpose of paying it to the person entitled to it, and in this Presidency, so long as the decision in *Kristnasawmy Mudaliar v. Official Assignee of Madras*(3) is law, as it

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(1) (1935) I.L.R. 59 Mad. 428.

(2) (1906) I.L.R. 33 Cal. 1040. (3) (1903) I.L.R. 26 Mad. 673 (F.B.)

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undoubtedly still is, there is no difficulty with regard to third parties claiming prior rights by way of attachment. The position being so, this case does not seem to present any difficulty. As a matter of expediency it is obvious that the course adopted here is the better one. The alternative seems to be this, as has been pointed out by my Lord the CHIEF JUSTICE: a suit is filed with regard to a matter which the defendant cannot contest and the only result is that there is delay and unnecessary expenditure for the parties. What happens under the present procedure? Here is this money lying in Court for the purpose of being paid out to the person who is entitled to receive it. The Crown goes to the Court and says, "Here is a debt which is due to me about which there can be no dispute." I consider that under those circumstances the Court can rightly invoke its power under section 151 of the Code of Civil Procedure in making the payment to the person entitled to it. CORNISH J. in the case to which my Lord has referred, *Deputy Commissioner of Police v. Vedantam*(1), draws attention to a decision from which I have derived assistance, *In re Henley & Co.*(2). In that case, a Bench consisting of JAMES, BRETT and COTTON L.J.J. emphasised that the fact that a remedy is given by a statute for the recovery of a debt due to the Crown in no way takes away the right of the Crown to invoke other methods if it thinks fit.

I agree that the decision of the Court below is right and that this petition should be dismissed with costs.

A.S.V.

(1) (1935) I.L.R. 59 Mad. 423.

(2) (1878) 9 Ch. D. 469.