

ANDHRA PRADESH HIGH COURT

Arvapalli Ramrao

Vs.

Kanumarlapudi Ranganayakulu

A.A.A.O. No. 12 of 1959

(P. Chandra Reddy, C.J., Gopalakrishnan Nair and Gopalrao Ekbote, JJ.)

16.07.1958. 22.03.1963

JUDGMENT

Chandra Reddy, C.J.

1. The question to be answered by the Full Bench is as to the effect of an attachment on a prior assignment of the decree and the remedies to be pursued by the assignee decree-holder after the attachment. This problem has to be solved with reference to the statutory provisions in the shape of Order XXI, Rules 16, 53 and 58 of the C.P.C.

2. Before we attempt to ascertain the precise scope and content of these provisions, we have to state a few facts necessary for this enquiry.

3. One Kanamarlapudi Ranganayakulu (hereinafter referred to as the 1st respondent) obtained a money decree for Rs. 1600/- in O. S. No. 650 of 1953 on the file of the Court of the District Munsif, Guntur, against six persons, who figure as respondents 2 to 7 in this enquiry. On 4-10-1956, he transferred the said decree in favour of one Ramarao, the present appellant, for a consideration of Rs. 500/- under a duly stamped document. Thereafter, four persons who obtained decrees against the 1st respondent in various Courts attached this decree. The appellant filed a petition in the Court of the District Munsif, Guntur under Order XXI. Rule 16 for recognition of the assignment and for execution of the decree. Notice of this petition was issued to the original decree-holder as also the attaching creditors and they all opposed the petition. The decree-holder resisted this on the plea that the entire consideration for the transfer was not paid, while the attaching creditor contested it on the ground that the transfer was antedated in order to defraud the attaching creditors and that, in any event, the appellant could not maintain the execution petition, his only remedy being to move the attaching Court to raise the attachment. The last contention prevailed with the result that the execution petition was dismissed. The opinion that the assignee decree-holder could not apply for execution of a decree when once it is attached and has to seek his remedy under Order 21. R. 58, C.P.C. rested on *Yerra Musala Reddy v. P. Ramayya*¹, An appeal carried by the transferee decree-holder did not bear fruit. It is the order of the appellate Judge that is the subject-matter of this appeal. It may be mentioned here that when the appellant filed a petition under Order XXI, Rule 58 to

¹5 Ind Cas 1010 (Mad)

raise the attachment, it was rejected on the ground that till the transfer was recognised, he had no locus standi to prefer any claim.

4. When the appeal came up for hearing before Qamar Hasan, J., the learned Judge made this order :

"Both the Courts below have relied on 5 Ind : Cas 1010 (Mad) in support of their conclusion in so far as the executability of the decree in O. S. No. 650 of 1953 was concerned, but I find that the reasoning in the said case was substantially adopted in *Thiruvengadan Pillai v. D. Subbaiah*², But the decision in 1912 Mad WN 176 was dissented in *Armuga Mudaliar v. Yagamba Bai Ammani*³,

In view of this conflict on the point in dispute in this appeal, I refer the case to a Division Bench which will be pleased to consider whether the case is a fit one to be referred to a Full Bench."

5. When accordingly the matter was placed before a Division Bench, it was referred to a Full Bench as decided by the learned Judges.

6. Before we try to resolve the divergence of judicial opinion, we think it will be useful first to discuss the matter in the light of the statutory provisions unhampered by decided cases.

7. We shall first turn our attention to Order XXI, Rule 16 which contains the law for an application for execution by the transferee of a decree. It postulates :

"Where a decree or, if a decree has been passed jointly in favor of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder :

Provided that, where the decree or such interest as aforesaid has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor and the decree shall not be executed until the Court has heard the objections (if any) to its execution :

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others."

8. We shall next extract the terms of Order 21, Rule 53, which provides for the consequences of an attachment. The rule, omitting the unnecessary portions, runs as follows :

"(1) Where the property to be attached is a decree either for the payment of

²1912 Mad WN 176

³17 Ind Cas 323 (Mad)

money or for sale in enforcement of a mortgage or charge, the attachment shall

be made :

- (a) if the decrees were passed by the same Court then by order of such Court and
- (b) if the decree sought to be attached was passed by another Court then by the issue to such other Court of a notice by the Court which passed the decree Sought to be executed, requesting such other Court to stay the execution of its decree unless and until :
 - (i) the Court which passed the decree sought to be executed cancels the notice : or
 - (ii) the holder of the decree sought to be executed or his judgment-debtor if he has obtained the consent in writing of the decree-holder or the permission of the attaching Court applies to the Court receiving such notice to execute the attached decrees.
- (2) Where a Court makes an order under Clause (a) of sub-rule (1) or receives an application under subhead (ii) of clause (b) of the said sub-rule, it shall, on the application of the creditor, who has attached the decree or his judgment-debtor, proceed to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed.
- (3) The holder of a decree sought to be executed by the attachment of another decree of the nature specified in sub-rule (1) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

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- (6) On the application of the holder of a decree sought to be executed by the attachment of another decree, the Court making an order of attachment under this rule shall give notice of such order to the judgment-debtor bound by the decree attached; and no payment or adjustment of the attached decree made by the judgment-debtor in contravention of such order after receipt of notice thereof, either through the Court or otherwise, shall be recognized by any Court so long as the attachment remains in force".

9. Rule 58 of the same order, which creates the machinery for investigation of claims and objections, in so far as it is of immediate relevance, says :

"(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit :

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed."

10. We will first consider the impact of Order XXI, Rule 53 on the transfer of a decree. The case on hand is governed by Rule 53(1)(b) and not clause (a) since the attachment was effected by a Court other than the Court which passed the decree sought to be executed. It is clear that clause (b) does not enact an absolute rule prohibiting the execution of the decree. It is a request to the

Court, which passed the decree, to stay execution until the two events contemplated by Rule 53(1)(b) happen. That being the position, it does not in any way affect the right of the assignee decree-holder to pursue the remedy available to him under Order XXI, Rule 16. It cannot be predicated, as was thought in some of the cases to be referred to presently, that an attachment destroys the right of an assignee decree-holder to apply for execution.

11. We will go back to Order XXI, Rule 16 with a view to consider what the rights of an assignee decree-holder under an assignment are and whether his remedy lies in gaining recognition of the rights obtained or to present an objection to the attachment. We will first deal with the second limb of this question.

12. It may be mentioned that the completion of a transfer does not depend upon any recognition of the Court as could be seen from the words "if the decree could be transferred by an assignment in writing" which implies that there has been a complete transfer. But does the assignment *proprio vigore* invest him with all the rights of a decree-holder and could he without anything more proceed to impugn the attachment of the decree? It is in this context that the scheme of the rule becomes relevant.

If we analyse the concept underlying the situation envisaged by this rule, it would be clear that the recognition of the Court is needed to take any steps in enforcement of his rights. The assignee cannot merely rest on his assignment for this reason. It is only the decree-holder, whose name appears on the face of it that could levy execution. The executing Court cannot regard any other person as being entitled to execute the decree. So, the assignee must get his name substituted in the place of the original decree-holder. But before that could be done, notice should issue to the assignor and to the judgment-debtor and the Court should adjudicate upon the objections if any urged by them. The objections of the transferor and his judgment-debtor could only be heard in the Court which passed the decree and the validity of the objections could not be adjudged by the attaching Court. Therefore, the first essential requisite for the assignee to proceed with execution is to put in a petition under Order XXI., Rule 16, since the permission to execute the decree will be given only after disposing of the objection of the transferor contemplated by that rule.

13. In *Jayanarayana v. S. Polayya*⁴, which considered the earlier decisions with regard to the position of the original decree-holder vis-a-vis the assignee of the decree debt, who had not initiated any proceedings to get himself recognised as the transferee decree-holder, it was ruled :

"The only person in whose favor the decree was, on the face of it, was the original decree-holder and the executing Court was bound to regard him as the person entitled to execute the decree and could regard no other person as such."

14. The position was reviewed elaborately in a judgment of a Division Bench of this Court in *Sitharamiah v. G. Atchiah*⁵,

⁴68 Mad LJ 392

⁵(1962) 2 Andh WR 65 : AIR 1962 And Pra 497

to which one of us was a party, where it was held that till the assignee applies to the Court and obtains recognition, the Court has no power to go behind the decree and enter into questions beyond the scope of the decree. So, the *sine qua non* for questioning the right of the attaching creditor or creditors is the recognition of the assignment by the Court. Without this, the attaching decree-holder would have no *locus standi* to call in question the right of the other creditors to

attach the decree. We will now discuss, the conflicting decisions on this aspect.

15. *Puthiandi Mammed v. Avalil Moidin*⁶, is the first case which dealt with the consequence of an attachment of a decree already transferred and on which reliance is placed by the learned Counsel for the appellant for the proposition that an application under Order XXI, Rule 16 should precede any proceeding by the transferee. We feel that this decision cannot serve as an authority for such a proposition. A suit was filed there by the assignee repudiating the transfer and seeking to recover the balance of the money paid by him to the transferor for the reason that he could not receive the full fruits of the assignment to him. His application under Section 232, C.P.C., the predecessor of Order XXI, Rule 16, was dismissed by reason of the attachment of the decree. Subramania Ayyar and Boddam, JJ. who constituted the Bench, while reversing the dismissal of the suit by the trial Court and granting a decree for the claim stated that there was only an agreement to transfer the decree and not a completed transfer recognized by Court and that the completion of the transfer in that case was prevented by the attachment of the decree for the defendant's debts and this attachment made it impossible for the transfer to the plaintiff to be completed by the recognition of the Court. This reasoning indicates that the learned Judges thought that the recognition of the Court was a pre-requisite to the assignment being completed and that attachment had put an end to the rights of the assignee. We are unable to subscribe to this principle. As pointed out earlier, it is not the recognition of the Court that completes the transaction of assignment, recognition being required only to enable the assignee decree-holder to proceed with the execution. We have already remarked that an attachment does not curtail the rights of the assignee but the execution will remain stayed till either of the two things contemplated by Order XXI, Rule 53(1) happens.

16. This case had not considered whether the assignee should invoke Section 278 of the Code of 3882 corresponding to Order XXI, Rule 58 before taking out execution under Section 232. They proceeded on the assumption that a petition under Section 232 was no longer maintainable.

17. The next ruling cited to us in the order of chronology is *Sadagopa Chariar v. Raghunatha Chariar*⁷, Here also, an action was raised by the assignee to recover the consideration paid by him for the assignment since subsequent to it the decree was attached by the creditors of the original decree-holder. When he applied for execution of the decree a year later, the petition was dismissed on the ground that the decree had been attached. Another application of the same relief was not pressed. Thereafter, he sued to recover the debt forming the consideration for the transfer. The learned judges of the Madras High Court, Munro and Abdur Rahim, JJ., held that the suit was not

⁶ ILR 20 Mad 157

⁷ ILR 33 Mad 62

maintainable since the assignee had not even filed objections before the attaching Court. In the course of the discussion of this topic, they said that the completion of the assignment did not depend upon recognition by the Court and it was assignment in writing which made the transferee a representative of a party to the suit. They observed that it was not necessary to read the decision in ILR 20 Mad 157 as laying down the proposition that when a decree was transferred by assignee in writing the property in the decree did not pass to the decree-holder at the time of the assignment but passed only after the transfer was recognized by the Court, and if the learned Judges intended to lay down any such rule, they were unable to agree with them. We express our respectful assent to this statement of law. We have already said ILR 20 Mad 157 does

not contain sound law on the subject.

18. If however this ruling could be read as was done in ILR 33 Mad 62 as laying down the proposition that the transfer of a decree should be regarded as conditional upon the Court granting permission to the transferee to execute it and that before this condition is fulfilled nothing could be done by the transferee, no exception could be taken to it. In the latter case the learned Judges sought to justify it on the ground that the transfer in the earlier case was not recognised by the Court and the plaintiff was in consequence unable to obtain the full fruits of the assignment. It is seen from the judgment that an application under Section 232 was dismissed because of the attachment in the view that it became impossible to have the transfer completed. However, it is unnecessary for us to pursue this matter any further as we have already indicated our view. Coming back to ILR 33 Mad 62, we cannot share the view that it was by having resort to Section 278 of the old Code, the predecessor of Order XXI, Rule 58 that he could establish his transfer and the moment it was brought to the notice of the attaching Court that there was a transfer in his favour, it was the duty of the attaching Court to withdraw the attachment and thereafter it was open to the plaintiff to apply again under Section 242, C.P.C. for execution of the decree. We find it difficult to accede to the propositions. There are difficulties in the way of the assignee decree-holder pursuing this course apart from the question whether it was obligatory on his part or not. We have already stated that the permission of the Court of the execution of the decree is needed and consequently an application should be presented with a view to execute the decree. Without that, the assignee has no locus standi to object to the attachment. Therefore, before he could initiate any proceedings, an application under Order XXI, Rule 16 should be filed. Whether it is necessary for him to get the attachment raised subsequently will be dealt with presently.

19. It is pertinent to note that the learned Judge thought in the latter part of the judgment that the transfer of the decree was conditional upon transferee securing the permission of the Court to execute it. In a way, this statement renders assistance to the conclusion reached by us.

20. Another decision of the Madras High Court, which is in consonance with this principle, is 5 Ind Cas 1010 (Mad) which is the foundation of the conclusion of the Courts below. Here also, a decree, which was transferred, was subsequently attached. The assignee of the decree applied for execution in the Court which passed the decree. Shortly thereafter, it was attached under the second paragraph of Section 273 corresponding to Order XXI, Rule 53(1)(b) by sending a request to the other Court to abstain from executing the decree until the notice was cancelled. In view of this request the execution application was rejected. This order of rejection was finally affirmed by Munro and Abdur Rahim, JJ. with the observations that the appellant's remedy was to prefer a claim in the Court which attached the decree. There is no discussion in the judgment. It was stated in it that the provisions of Section 272 were imperative and that Court, which passed the decree had no alternative but to reject the assignee decree-holder's application. The learned Judges did not try to solve the problem with reference to the two provisions, namely Sections 232 and 273. They assumed that the attachment of the decree would force the assignee to prefer a claim.

21. 13 Ind Cas 659 (Mad) went further than 5 Ind Cas 1010 (Mad). That was an instance of an assignment prior to the attachment of the decree. Notwithstanding this it was decided by Benson and Abdur Rahim, JJ., that by reason of Order 21, Rule 53, it is only the attaching creditor and

the holder of the decree that could take out execution and not the assignee, though the assignment was anterior to the attachment. The ratio of this ruling was that Order XXI, Rule 53(1)(b) did not include the transferee and that Rule 36 indicates that the Legislature did not want to treat the assignee decree-holder as standing exactly in the same position as the decree-holder himself for the purpose of execution. He is not entitled to take out execution as of right, although the decree-holder himself would be entitled to do it. We find it difficult to accept the reasoning underlying this case. The non-mention of the name of the transferee in Rule 53 does not stand in the way of the transferee taking out execution. That right is conferred upon the assignee by Rule 16.

22. A scrutiny of the rule would reveal that it does not lend any colour to the theory that the Legislature did not intend to treat the assignee in the same way as the original decree-holder. On the other hand, it recognizes the indubitable principle that the assignee has the same rights as the assignor. It does place the assignee under any special disability. When once permission to execute the decree is accorded, he becomes the representative of the original decree-holder. The latter part of Rule 16 says :

"the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder." It is thus abundantly plain that, for the purposes of execution, the assignee is in the same position as the assignor. There, is therefore, no basis for the conclusion reached by the learned Judge in this case. The attachment of a decree does not put an end to the rights of the assignee. Subject to the objection that the assignment was designed to defeat the creditors, the property in the decree passed completely to the assignee and there is no property of the decree-holder which his judgment-creditor could attach, as by reason of the assignment, it has ceased to be that of the decree-holder. Further, we will show that even if the assignment was subsequent to the attachment, an application under Order XXI, Rule 16 could not be thrown out as incompetent.

23. We will next take up the cases which have struck a different note.

24. In 17 Ind Cas 323 (Mad) the point debated was whether an assignee of a decree, which was already attached, could under Order 21, Rule 53 execute the decree notwithstanding the attachment. Manifestly this is a case of assignment after attachment. Notwithstanding this, the Division Bench of the Madras High Court consisting of Sundara Aiyar and Sadasiva Aiyar, JJ. ruled that the assignee could execute the decree. No doubt, this will be subject to the rights of the creditors of the assignor and it would not prevent the latter's creditors from proceedings against the decree as if it remained the property of the assignor. It is true that the learned Judges did not refer to 5 Ind Cas 1010 (Mad) or discuss the question bearing on Rule 58 of Order XXI but they considered 13 Ind Cas 659 (Mad) and disagreed with that ruling. It was observed there that the attachment of a decree did not in any way curtail the rights of the assignee. Thus, they affirmed the rule that an attachment does not in any way affect the rights of an assignee to maintain an application under Order XXI, Rule 16. It was not necessary for them to go into the question whether the remedy of the assignee was to urge objections to the attachment, for the obvious reason that a subsequent assignee could not object to the attachment as at that time he had no

interest in the decree and as such locus standi to question it. It only establishes the principle that the right of an assignee to execute the decree is not taken away by the attachment thereof. It was also laid down there that both the assignee and the attaching creditors were entitled to apply for execution, both of them being the representatives of the original decree-holder and to have an adjudication as to whether either of them has got the right to execute and what the rights of priority are, and it was open to the attaching creditor to urge this objection impeaching the earlier assignment in execution proceedings. This implies that even in regard to an assignment before attachment, the assignee decree-holder could take out execution and the objections available to the attaching creditors, such as the purpose of the assignment could be decided by the Court which passed the decree, which means that there is no necessity for the assignee to approach the Court which attached the decree. In our opinion, the doctrine of 17 Ind Cas 323 (Mad) is sound and is supported by the provisions of the Civil Procedure Code.

25. In this context, we may advert to Section 64 which says :

"Where an attachment has been made, any private transfer or delivery of the property attached or any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment."

26. The concept embodied in this section is that an alienation of any property is invalid only as against the creditor of the alienor but so far as the alienor is concerned, it is binding on him. An alienation or an assignment is valid as against the alienor. The plea that an alienation is invalid by reason of the prior attachment is not available to an assignor.

27. Indications to the same effect are to be seen in the terms of Order XXI, Rule 53 itself. That rule does not contain a bar against the assignment of a decree while sub-rule (4) specifically prohibits the transfer or the alienation of a decree other than a decree within the connotation of sub-rule (1). That sub-rule recites :

"Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (1), the attachment shall be made by a notice by the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and where such decree has been passed by any other Court, also by sending to such other Court a notice to abstain from executing the decree sought to be attach until such notice is cancelled by the Court from which it was sent."

This provision of law gives full support to the principle enunciated in 17 Ind Cas 323 (Mad). The doctrine in 17 Ind Cas 323 (Mad) was approved in *Ramkrishna Aiyar v. Mari Goundan*⁸, The Division Bench, which decided that case, expressed the opinion that the assignment of an attached decree was valid, though subject to the rights of the creditors and that the assignee had only permissible rights to execute the decree. It was observed that there were no reasons why the principle underlying 17 Ind Cas 323 (Mad) should not be accepted.

28. In the same trend of thought is *Hazariram v. Kedar Nath*⁹, The rule stated there was that

during the subsistence of the attachment of the decree, the holder of it could validly transfer it and the transferee was entitled to be substituted in the place of the transferor under Order XXI, Rule 16. No doubt, it was recognised there that the rights of the creditor, who had previously attached it, would prevail over those of the assignee.

29. A recent judgment of this Court in 1962-2 Andh WR 65 : AIR 1962 Andhra Pradesh 497 already adverted to had to consider the question whether the assignee of a decree could prefer a claim when the decree was subsequently attached without applying under Order XXI, Rule 16. The topic received full attention in this judgment. After the exhaustive review of the rulings of the various High Courts taking divergent views, the opinion was expressed that the assignee, without applying under Order XXI Rule 16, could not question the attachment of the property in question and the sale thereof. In our view, this decision, which is in consonance with 17 Ind Cas 323 (Mad), represents the correct law. To hold otherwise is to create practical and obvious difficulties. At the outset, it must be borne in mind that all that Order XXI, Rule 53(1) provides is that the execution of an attached decree would remain stayed till it is cancelled or the attaching creditors or the judgment-debtors with their consent apply to the Court receiving the notice to execute the decree.

30. As observed by their Lordships of the Privy Council in *Mahalingam Chettiar v. Ramanathan Chettiar*¹⁰, an attachment under Rule 53(1)(b) is only in the shape of a request and it does not purport to prohibit the Court to which it is addressed from executing the decree unless the conditions contained in the request were fulfilled and the purpose of the request was to see that the holder of the decree did not himself proceed to execution without the leave of the Court making the attachment; in other words, the object of this rule is to prevent the holder of the attached decree from realizing and taking away the fruits of the decree and to enable the attaching creditor

⁸ AIR 1927 Mad 1025 ¹⁰ ILR 1941 Mad 1

⁹ ILR 7 Pat 726

or creditors to come to the Court which passed the decree to apply for execution and thus to safeguard the interests of the attaching creditors also. Their Lordships also laid down that a judgment creditor who succeeded in attaching the decree, could apply to the Court for execution of the decree without obtaining the concurrence or consent of the other attaching creditors. This aim of the Legislature could also be gathered, from sub-rule (6) of Rule 53, which has already been quoted. It does not contain any absolute prohibition. It only prescribes a period during which the stay remains operative i.e., till the notice is cancelled by the attaching Court or till the attaching creditor and the holder of the decree sought to be executed or with his consent his judgment debtor apply to the Court for execution. It also appears from Rule 53 that all persons interested in the decree attached have to approach the Court which passed the decree, which means that the claims of all persons have to be adjudicated upon only by that Court. In other words, the conflicting claims are to be worked out in the execution of the decree. By reason of this provision the rights of all persons are protected and even if one of the creditors recovers money, it would be only subject to the provisions of Section 73 of the Code.

31. That being the correct-legal position, no purpose is served by the assignee decree-holder invoking Order XXI, Rule 58. It is also worthy of note that that provision of law does not make it obligatory upon persons having interest in the property to present objections or claims against the

attachment. The consequence of not filing objections under that rule is that it will enable the attaching creditor to proceed with the execution. That this will not result in any detriment to the assignee decree-holder is seen from Order 21 Rule 53. His application under Order XXI, Rule 16 is on the file of the Court which passed the decree and the objections of the attaching creditor to the assignment on the ground of its being in fraud of creditors could be urged and the assignee decree-holder could also maintain that the property in the decree having already passed to him, there was nothing belonging to the judgment-debtor which could be subjected to attachment or execution by his creditors.

32. Now we will deal with the difficulties in following the procedure indicated in the line of cases beginning with ILR 33 Mad 62. If the assignee is required to prefer objections, the questions legitimately arise; is he to present objections in all Courts which have issued notices under Rule 53(1)(b) as in the present case ? If he should file objections in all the Courts and if conflicting decisions are given by the different Courts, which is to be operative and final ? Is he to institute suits in different Courts to vacate all the orders prejudicial to him ? If the Courts give different decisions in the suits, is he to file appeals against them and further appeals to the High Court ? There is a possibility of conflicting opinions being expressed in these appeals in the High Court also unless all of them are heard together by a single Bench. Thus, this procedure will lead to anomalies and discordance and even complications and confusion. If, on the other hand, the interpretation put by us is adopted, it will obviate all these difficulties. The right of all the persons interested in the decree will be determined in the execution petition. If the attaching creditors are able to impeach the assignment as being designed to defeat the rights of the creditors, their rights will take precedence over those of the assignee and the latter will be entitled only to the surplus of the proceeds after satisfying the decrees of the execution creditors. If, on the other hand, the assignment is held to be bona fide, he will be entitled to the fruits of the decree in to.

33. For all the above reasons, we hold that the assignee of a decree need not take steps to raise an attachment effected subsequent to the assignment either before applying for execution under Order XXI, Rule 16 or subsequently and he can be content with applying for recognition and for execution under Order XXI, Rule 16. The question is answered accordingly.

34. Since the whole case has been referred to the Full Bench and there is nothing further to be done in the matter, we direct that the order of the trial Court, as affirmed by the lower appellate Court, be set aside and the case sent back to the trial Court for proceeding with the application on merits.

Appeal allowed.