
(1922) 12 MAD CK 0059
In the Madras High Court

C.L. Kalyanasunadaram Aiyar

APPELLANT

Vs

S. Narasimha Aiyangar and Others

RESPONDENT

Date of Decision : 21-12-1922

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1

Citation : 73 Ind. Cas. 456

Hon'ble Judges : Venkatasubba Rao, J;Spencer, J

Bench : Division Bench

Judgement

1. The Subordinate Judge was tightly of opinion that the appellant's attachment of the decree obtained by the Receiver in Original Suit No. 113 of 1919 was invalid for want of the leave of the Court that appointed the Receiver. We accept the principle that an act done without the Court's sanction to proceed against a Receiver could subsequently be validated, as has been held by this Court in Karooth Parakote Ammukutty v. Manavikraman 59 Ind. Cas. 568 and Jangana Sanyasiah v. Mycherla Peda Atchanna 70 Ind. Cas. 759 :15 L.W. 289 : 42 M.L.J. 339, and by the Calcutta High Court in Banku Behary Dey v. Harendra Nath Mukherjee 8 Ind. Cas. 1 : 15 C.W.N. 54 and Sarat Chandra Banerjes v. Apurba Krishna Roy 14 C.L.J. 55 respectively.

2. But in this case no step had been taken to validate the irregular attachment by the time that the Receiver assigned his interest as decree-holder to the innocent purchaser, who is 1st respondent in this appeal, and, therefore, the appellant's right as an attaching creditor cannot be allowed to prevail over the rights of a bona fide transferee for consideration of the decree-holder's interest. An attempt has, been made to show that the Receiver had no power to assign the decree under the powers vested in him, but this contention cannot be maintained in view of the wide authority given by the vesting order of 18th April 1908, which expressly refers to the "full powers" of Order XL, Rule 1.

3. The appeal fails and is dismissed with cost.