

(1915) 11 MAD CK 0084
In the Madras High Court

Devaraja Aiyangar

APPELLANT

Vs

Tirumalasami Naidu and Bodi Chettiar

RESPONDENT

Date of Decision : 26-11-1915

Acts Referred:

Citation : 32 Ind. Cas. 489

Hon'ble Judges : William Ayling, J;Abdur Rahim, J

Bench : Division Bench

Judgement

In Second Appeal No. 1699 of 1914

1. The plaintiff has instituted this suit to recover certain property from the defendant, on the strength of his purchase from the Official Assignee of Madras, who was in possession of the properties of the judgment-debtor. The purchase was in execution of a money-decree and was made in 1907. The defendant purports to be another purchaser of the same property and his purchase was sometime in 1904. He purchased in execution of a mortgage decree. The date of the decree is 12th August 1898. The owner of the property Anandalwar was adjudicated an insolvent on his own application on the 6th January 1902. The sale, therefore, under which the defendant purchased was brought about after Anandalwar had become an insolvent and his property had vested in the Official Assignee. But the Official Assignee was not made a party to the proceedings in execution. Both the lower Courts have found upon the evidence that the purchase of the defendant was not a bona fide one, that the mortgage-decree at the time he obtained the assignment of it had been satisfied and that the assignment was for no consideration and collusive and that, therefore, the purchase gave no title to the defendant. It is perfectly clear upon the evidence that Anandalwar, the insolvent, had entered into several fraudulent transactions in order to defraud his creditors and it is also well established that the defendant was a friend of his, and assisted him in many of these fraudulent transactions. There is the important fact that both in the original schedule and in the amended schedule, the insolvent did not mention that there was anything due under the

mortgage-decree. It is true that an application was subsequently filed by the original decree-holder, in which he claimed that there was a balance of Rs. 370 and odd still due. But if as a matter of fact the decree was unsatisfied at the date of the alleged assignment to the defendant, nothing was easier for the defendant than to have gone into the witness-box, and deposed to the fact that there was a balance due and that he actually paid, that amount to the decree-holder. He has not chosen to go into the witness-box and he was the best person to prove that as a matter of fact he paid the consideration for the assignment or that the decree was unsatisfied on the date of the assignment. Under the circumstances, it is not possible for us to say in second appeal that there was no evidence to show that the transaction which resulted in this purchase of the defendant was a fraudulent and collusive one and that the decree was, as a matter of fact, satisfied before the assignment. If then the defendant knew of it and took the assignment without paying any consideration with full knowledge that the decree had been paid off, it could not be Contended that the purchase conveyed any title. That is sufficient to dispose of the second appeal. But there is also another objection to the validity of the defendant's purchase. And it is his failure to bring on record the Official Assignee in the execution proceedings. When Anandalwar was adjudicated an insolvent, all his rights in the properties became vested in the Official Assignee and it was certainly the duty of a decree-holder, whether of a money-decree or a mortgage-decree, proceeding in execution against any property which belonged to the insolvent, to bring on record the Official Assignee who was the person in whom all the rights of the properties had become vested. The result of his failure to bring on record the Official Assignee, must be taken to be that the sale in execution cannot bind him. This is clearly deductible from what is laid down by their Lordships of the Privy Council in the case reported as Ragunath Das v. Sundar Das 24 Ind. Cas. 304; 27 M.L.J. 150; 18 C.W.N. 1058 their Lordships say dealing with the case of a money-decree-holder: "Their Lordships are of opinion that this sale was altogether irregular and inoperative. In the first place the property having passed to the Official Assignee, it was wrong to allow the sale to proceed at all. The judgment-creditors had no charge on the land and the Court could not properly give them such a charge at the expense of the other creditors of the insolvents". This, of course, does not apply to the present case. But then they proceed to say: "In the second place, no proper steps had been taken to bring the Official Assignee before the Court and obtain an order binding on him, and accordingly he was not bound by anything which was done. In the third place, the judgment-debtors had at the time of the sale no right, title or interest which could be sold to or vested in a purchaser, and consequently the respondents acquired no title to the property." The last two propositions certainly bear on the present case and show that the defendant's purchase could not bind the Official Assignee, who was not brought on record in the execution proceedings. The second appeal will be dismissed with costs.

In Second Appeal No. 1700 OF 1914.

2. Second Appeal No. 1700 of 1914 follows our decision in the above Second

Appeal No. 1699 of 1914 and for the like reasons as are recorded in the judgment therein this second appeal will be dismissed with costs.