
(1922) 03 MAD CK 0016
In the Madras High Court

G. Ramaswami Aiyar

APPELLANT

Vs

Deivasigamani Pillai and Others

RESPONDENT

Date of Decision : 14-03-1922

Acts Referred:

Trusts Act, 1882 — Section 94

Citation : AIR 1922 Mad 397 : (1922) 16 LW 282 : (1922) 43 MLJ 129

Hon'ble Judges : Kumaraswami Sastri, J

Bench : Division Bench

Judgement

Kumaraswami Sastri, J.—I am of opinion that the decision of the Subordinate Judge cannot be supported. There can be little doubt that the

sum of Rs. 426-13-5 forms part of the amount borrowed under Ex. B which is a mortgage deed executed by Sivachidambaram Pillai, the 2nd

defendant in S.C. No. 264 of 1908 and which recites that the money was borrowed and paid into Court for setting aside the Court sale. Ex. D.

the lodgment schedule shows that the amount was paid by Sivachidambaram Pillai. The word "Sadasivam Pillai" in the certified copy filed in Court

is a mistake for "Sivachidambaram Pillai" as appears from the certified copy filed before me. It seems to me to be clear that as between

Kanakasabhai Pillai and Sivachidambaram Pillai Sivachidambaram who paid up the decree amount is prima facie entitled to contribution from

Kanakasabhai Pillai as regards half the amount paid. Kanakasabhai Pillai died and his widow who is the 1st defendant in this suit conveyed her

husband's property to the 2nd defendant under a sale deed Ex. G dated the 28th April 1913 directing him to discharge her husband's debts.

2. The main contention on behalf of the respondents is that so far as the 2nd defendant in this suit is concerned there is no cause of action against

him, and consequently that the last plaintiff in the present suit who got an assignment of the rights of Sivachidambaram Pillai acquired nothing

because the right to contribution is merely a right to sue for damages. No case has been cited to show that a right to contribution is not assignable.

As regards the contention that there is no cause of action against the 2nd defendant it should be noted in the present case that the 2nd defendant

has taken an assignment of all the properties burdened with the obligation to pay the debts. There is the further fact in this case that when the

decree-holder in the Small Cause Suit No. 264 of 1908 attached the property the 2nd defendant as the assignee offered to pay off the 1st

defendant's share of the decree amount. I think that where a person gets a transfer of all the assets and subjects himself to the payment of debts a

creditor to whom such a transfer is communicated has a right to proceed against the transferee. In *Grander Chundcr Ghose v. Mackintosh* ILR

(1879) Cal. 897 the question as to how far lands purchased from a Hindu devisee are liable in the hands of the purchaser for the testator's debts

was raised and it was held that the purchaser was liable if it could be proved that such purchaser knew that there were debts of the ancestor or

testator kept unsatisfied and also that the heir or devisee to whom he paid his purchase money intended to apply it other wise than in the payment

of such debts; but a purchaser ignorant on either of these points has a safe title. This case was followed with approval in *Kasumunnissa Bibee v.*

Nilaraina Bose (1819) Cal. 79. In the present case it is clear that the alienation in favour of the 2nd defendant was subject to the payment of the

debts of *Kanakasabhai Pillai* and that in the course of the execution proceedings the 2nd defendant offered to pay *Kanakasabhai Pillai's* portion of

the decree amount. The creditor therefore was given notice of the assignment in favour of the 2nd defendant and of his willingness to pay

Kanakasabhai Pillai's share of the decree amount. The case therefore falls within the decision of *Jenkins, C.J. and Mookerjee, J.* in *Debnarayan*

Dutt v. Chunilal Ghose ILR (1914) Cal. 137. The 2nd defendant who paid the decree holder is entitled to all the rights which the decree holder

would have had. Vide *Rajah of Vizianagaram v. Rajah Setrucherla Somaskharaaz* ILR (1903) Mad. 686. I have in *Itti Panku. Menon v.*

Dharmanachan ILR (1917) Mad. 488 given my reasons for holding that the ruling in *Tweddle v. Atkinson* (1861) I.B. & S. 393 is not of universal

application and is subject to exceptions and it seems to me that a person who takes an assignment of all the properties of a deceased from his legal

representative undertaking to pay his debts cannot be heard to say that he is not liable in a suit by a creditor on the simple ground that there is no

privity of contract between the parties. In cases like the present I am of opinion that Section 94 of the Trusts Act applies. The consideration was

the amount of cash paid to the vendor less the amount which the purchaser would have to pay to the creditors and it was never intended that the

purchaser should take the property free from the obligation undertaken by him.

3. I reverse the decree of the Subordinate Judge and pass a decree for the 1st plaintiff for Rs. 100-13-9 being the decree amount payable to the

1st plaintiff (the suit having been compromised as regards 2nd plaintiff) in respect of the amount paid by Sivachidambaram Pillai in satisfaction of

the decree in S.C. No. 264 of 1907 with costs throughout on the amount decreed and interest from date of plaint up to date of payment.