

(1926) 01 MAD CK 0010
In the Madras High Court

Kasthuri Chetty and Another

APPELLANT

Vs

Chinnaswami Pillai (dead) and Others
Chinnaswami
Pillai (dead) and Others Vs Alaga Pillai and Others

RESPONDENT

Date of Decision : 05-01-1926

Acts Referred:

Citation : 95 Ind. Cas. 262

Hon'ble Judges : Charles Gordon Spencer, J

Bench : Single Bench

Judgement

In S. A. No. 443 of 1923

1. The plaintiff's suit was dismissed in the Court of first instance on the District Munsif's finding that the sale-deeds, Exs. D, E and F were brought

about to defraud 1st defendant's creditor, viz., 4th defendant. The Subordinate Judge also found as a conclusion of fact that these transactions

were not, (sic) a fide.

2. He, however, stave the plaintiff, who was a purchaser under Ex. F, a charge for Rs. 450 on the suit properties, on the ground that his vendor

Maruthanayagam Pillai had paid Rs 400 in discharging a prior mortgage (Ex. C) on 1st defendnt's house in Dindigul. The learned Judge did not

rely on the doctrine of subrogation, but he gave this relief out of equitable considerations. In so doing he overlooked the law that there can be no

equity in favour of a purchaser in fraud of creditors who acts without bona fides Vide Karuppan Ambalagan v. Muhammad Spkuth Levvai (1).

3. Even assuming that some consideration passed for the sale under Ex. F to plaintiff which the District Munsif found against, the Subordinate

Judge has not clearly found to be established. The plaintiff has no right to be

paid what his vendor paid under a speculative and fraudulent purchase.

4. The appeal is allowed and the decree of the lower Appellate Court is reversed and the decree of the District Munsif dismissing the suit is restored with costs in this Court.

In S. A. No. 1489 of 1923.

5. On the findings of the Courts below, and in view of the result of the connected Second Appeal No 443 of 1923, this second appeal is dismissed with costs.