

(1926) 01 MAD CK 0009
In the Madras High Court

Kasturi Chetty and Another

APPELLANT

Vs

Chinnasami Pillai and Others

RESPONDENT

Date of Decision : 05-01-1926

Acts Referred:

Citation : AIR 1926 Mad 624 : (1926) 23 LW 760

Hon'ble Judges : Spencer, J

Bench : Division Bench

Judgement

Spencer, J.—The plaintiff's suit was dismissed in the Court of first instance on the District Munsiff's finding that the sale deeds Exhibits D, E

and F, were brought about to defraud 1st defendant's creditors, viz., 4th defendant. The Subordinate Judge also found as a conclusion of fact that

these transactions were not bona fide.

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

Maruthanayagam Pillai, had Rs. 400 in discharging a prior mortgage (Ex. C.) on 1st defendant'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 Ambalagaram (died) and Others Vs. Mahammad

Sakuth Levvai, .

3. Even assuming that some consideration passed for the sale under Exhibit IF to plaintiff, which the District Munsif found against and 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.

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.