
(1927) 11 MAD CK 0037
In the Madras High Court

Krishnaswami Naidu

APPELLANT

Vs

Karuppan Chettiar and Others

RESPONDENT

Date of Decision : 30-11-1927

Acts Referred:

Citation : (1928) 27 LW 538 : (1928) 54 MLJ 663

Judgement

1. The decision in Ramachandra Rao v. Kandasami Chetti ILR (1895) M 498, cited by the court below, and those relied on in it, In re Pinto Silver

Mining Company (1877) LR 8 Ch. D. 273 and In re London and Caledonian Marine Insurance Company (1878) LR 11 Ch. D 140. as well as

other cases show that when a company has been dissolved it ceases to exist for all purposes and its officers are functus officio; that a liquidator is

also an officer of the company and becomes functus officio. Vide Re The Westbourne Grove Drapery Co., Ltd. (1878) 39 LT 30 and Coslon v.

Gorst LR (1891) 2 Ch. 73. But assuming that it is so, the question still arises whether he cannot complete a formal act like giving a transfer in

writing for a decree which has been already transferred.

2. In the present case, the decree was transferred by auction on 1st February, 1922, when the company was not dissolved. It has been held in

Afzal v. Ram Kumar Bhudra ILR (1886) C 610, Dagdu v. Vanji ILR (1900) B 502 and Govindarajulu Naidoo v. Ranga Rao (1920) 40 MLJ

124, and we see no reason to depart from the view adopted by these decisions, that a decree is not an actionable claim within the meaning of

the Transfer of Property Act and therefore an assignment of a decree need not be in writing. It follows that the assignment was valid and complete.

But for purposes of execution under the Civil Procedure Code, O. XXI, Rule 16,

requires the transfer to be in writing. This writing has since been given by the original transferor after he has ceased to be liquidator. There is nothing in the Companies Act, or in the decisions on it which prohibits

him from doing so, or which compels us to regard it as void, seeing that the original transfer was effected by him at a time when he was liquidator.

Whatever looseness or irregularity there may be in such a procedure, neither the company nor its share-holders complain of it, and we do not see

how a person in the position of a judgment-debtor should be allowed to do so.

3. The result is that the application of 2nd July, 1923, was a proper application and, though not re-presented immediately after having been amended, was a step-in-aid for execution.

4. The present application is therefore in time. The appeal is allowed with costs here and in the lower appellate court. The appellant will be

permitted to proceed with the execution of the decree in accordance with law. Costs in the first court will abide the result.