

**(1927) 11 MAD CK 0005**  
**In the Madras High Court**

Krishnaswami Naidu

APPELLANT

Vs

Karuppan Chettiar (Given up) and Others

RESPONDENT

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**Date of Decision :** 30-11-1927

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 16

**Citation :** (1928) ILR (Mad) 681 : 109 Ind. Cas. 563

**Hon'ble Judges :** Ramesam, J; Jackson, J

**Bench :** Division Bench

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**Judgement**

1. The decision in Ram-Chandra Rau v. Kandasami Chetti 18 M. 498 : 6 Ind. Dec. 698 cited by the Court below and those relied on it--In re

Pinto Silver Mining Co., (1878) 8 Ch. D. 273 : 47 L.J. Ch. 591 : 38 L.T. 536 : 26 W.R. 622 and In re London and Caledonian Marine Insurance

Co, (1879) 11 Ch. D. 140 : 40 L.T. 666 : 27 W.R. 713,--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; and that a liquidator is also an officer of the Company and becomes functus officio Vide In re

Westbourne Grove Drapery Co., 1879) 39 L.T. 30 : 27 W.R. 37 and Coxon v. Gorst (1891) 2 Ch. 73 : 60 L.J. Ch. 502 : 64 L.T. 444 : 39

W.R. 600. 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 12 C. 610 : 6 Ind. Dec. 415; Dagdu v. Vanji 24 B. 502 : 2 Bom. L.R. 414 : 12 Ind. Dec. 866 and M. Govindarajulu

Naidoo Vs. D.H. Ranga Rao and Others, 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, Order XXI, Rule 16 requires the transfer

to be in writing. This writing has since been given by the original transfer or 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 proper application and though not represented 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.