

(1917) 08 MAD CK 0045
In the Madras High Court

Muthukumara Chettiar

APPELLANT

Vs

Alagappa Chettiar and Others

RESPONDENT

Date of Decision : 06-08-1917

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 63
Transfer of Property Act, 1882 — Section 53

Citation : AIR 1918 Mad 537 : 42 Ind. Cas. 554 : (1917) 6 LW 518

Hon'ble Judges : Spencer, J; Krishnan, J

Bench : Division Bench

Judgement

1. In this case the appellant attached property before judgment and the respondents, who hold the property of the judgment-debtors under deeds of trust for distribution to their creditors, brought this suit to establish their right to the property.
2. It is first argued that the suit is not maintainable, as Order XXXVIII of the CPC does not expressly provide a right of suit in the case of claims preferred to property attached before judgment.
3. We think that the wording of Order XXI, Rule 63, is sufficiently wide to include claims to property attached before judgment as well as claims to property attached in execution of decrees. Moreover, Order XXXVIII, Rule 8, provides that claims to property attached shall be investigated in the manner provided for the investigation of claims to property attached in execution of decrees for the payment of money.
4. The next argument is that the transfer by debtors of the whole of their property for distribution among their creditor was an act of insolvency and, therefore, void. In support of this proposition appellant's Vakil quotes Manmohandas Ramji v. Macleod 4 Bom. L. R. 617. That decision only declared that assignments in favour of trustees by persons who were subsequently adjudicated insolvents were void as against the Official Assignee. Appellant has shown no authority under which he can avoid a transfer prior in date to his

attachment without its being shown to have been made with an intent to defeat or delay creditors of the transferor and thus voidable u/s 53 of the Transfer of Property Act; and in this case the finding on the question of fact by the Appellate Court is that the transaction was perfectly bona fide.

5. The last point taken was that the trust deeds (Exhibits E and E-1) did not pass the property of the minor sons of the transferor's deceased brother, as Somasundaram, who was the manager of the joint family and executed Exhibit E-1, described himself as the guardian of the minors whereas their mother was their lawful guardian. If Somasundaram was in fact manager of the family, we do not think his misdescription of himself as guardian will affect the title which he purported to convey on behalf of the family and the Subordinate Judge has stated that the trust deed was executed for their benefit. As for Exhibit E-1, it may have been a superfluous document executed ex abundante cautela but the operation of Exhibit E will not be diminished thereby.

6. The second appeal fails and is dismissed with costs.