

(1944) 11 MAD CK 0023
In the Madras High Court

P. Rajagopala Chetty

APPELLANT

Vs

A. Kesava Pillai and Others

RESPONDENT

Date of Decision : 28-11-1944

Acts Referred:

Transfer of Property Act, 1882 — Section 100

Citation : AIR 1945 Mad 126 : (1945) ILR (Mad) 726 : (1945) 58 LW 14 :
(1945) 1 MLJ 57

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The only question in this appeal is whether Section 100 of the Transfer of Property Act overrides Section

52. The City Civil Court which tried the suit held that it did not and this opinion was shared by Somayya, J., on appeal. This appeal has been filed

u/s 15 of the Letters Patent against the judgment of the learned Judge.

2. We can see no room to doubt the correctness of the judgments below. Section 52 of the Transfer of Property Act which embodies the doctrine

of lis pendens is couched in very wide terms.

3. Section 100 was amended by the Transfer of Property (Amendment) Act, 1929, when the following words were added to the second

paragraph:

and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of

a person to whom such property has been transferred for consideration and without notice of the charge.

The argument is that as the mortgagee in, this case took the mortgage without

knowledge of the pendency of a suit filed on the original side of this

Court in which a charge was given to the plaintiff his rights are not affected by the charge. That suit was G.S. No. 75 of 1936 and was filed by a

widow of a deceased coparcener for maintenance and for marriage expenses.

"The plaintiff asked for a charge on the property mortgaged and on

other properties. A decree was passed on the 28th April, 1939 giving her a charge on all the properties mentioned in the plaint in respect of the

amount payable to her for maintenance. It was during the pendency of that suit that the two surviving coparceners executed a mortgage in favour of

the appellant.

4. The words "" save as otherwise expressly provided by any law for the time being, in force "" which form part of the amendment to Section 100

clearly put the appellant out of Court. Section 52, which is a law for the time being in force, expressly provides that property cannot be transferred

or otherwise dealt with by" a party to a suit or proceeding so as to affect the rights of another party thereto "" under any decree or order which may

be passed therein except under the authority of the Court and on such terms as it may impose."" Moreover the Legislature could never have

intended by the amendment to Section 100 to qualify the doctrine of lis pendens. Section 100 cannot be read without regard to what is said in

Section 52.

5. The same opinion was expressed by the Bombay High Court in the recent case in Ramachandra Gururao v. Kamalabai ILR 1944 Bom. 274.

6. The appeal is dismissed with costs. The second and third respondents are minors and appear by their guardian ad item. We fix the advocate's

fee here at Rs. 50.