

(1927) 10 MAD CK 0070
In the Madras High Court

Periathambi Nayinar

APPELLANT

Vs

Gundhunada Nayinar and Others

RESPONDENT

Date of Decision : 19-10-1927

Acts Referred:

Citation : AIR 1928 Mad 360

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—This is an application to revise the order of the District Munsif of Arni disallowing the application for execution by the transferee-decree-holder. The decree-holder was an insolvent and he transferred the decree after insolvency and after his property had vested in the Official Receiver. The application for execution by the petitioner was disallowed by the District Munsif. On appeal the District Judge of North Arcot held that in certain circumstances such a transfer might be valid if it was bona fide and for consideration and set aside the order of the lower Court and remanded the case for disposal on the merits after recording a finding on the point as to whether the transfer was for consideration or not. The District Munsif has found that the transfer had no consideration. It is contended for the (petitioner that the Court had no jurisdiction to go into the question of consideration at the instance of the Official Receiver, for the Official Receiver was no party to the transaction and the only persons entitled to notice were the judgment-debtor and the transferor under Order 21, Rule 16, and therefore the order of the lower Court was made without jurisdiction. The position of the Official Receiver is not that of a person who has had nothing to do with the transfer. The transferor having become an insolvent and his property having vested in the Official Receiver, the right to the decree which was passed in his favour became vested in the Official Receiver. So any transfer made by him after his property became vested in the Official Receiver cannot have any effect. But it is urged by the vakil for the petitioner that this point was not pressed before the District Court and therefore it is not open to this Court to go into the question. This contention cannot be upheld.

2. The question now for consideration is whether the transferee-decree-holder can execute "the decree and in considering that question this Court is entitled to go into the question whether anything passed by reason of the transfer and. when it is admitted that the transferor became an insolvent, and his properties vested in the Official Receiver before the date of the transfer, it is idle to contend that the transferor gave a good title to the transferee-decree-holder, for the Official Receiver represents not only the general body of creditors but the insolvent also and that being so he is the; person who would be entitled to notice under Rule 16 and he is entitled to object to the execution of the decree on the ground that he never had any notice of the transfer of the decree to the transferee-decree-holder. I see no reason to interfere with the order of the District Munsif and this petition is dismissed with costs.