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**(1949) 11 MAD CK 0004**

**In the Madras High Court**

**Case No : City Civil Court Appeal No. 17 of 1948**

P.S. Rajagopala Chetty

APPELLANT

Vs

S. Abdul Shukkoor Sahib and Others

RESPONDENT

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**Date of Decision :** 11-11-1949

**Acts Referred:**

Transfer of Property Act, 1882 — Section 52

**Citation :** AIR 1950 Mad 396 : (1942) 55 LW 74

**Hon'ble Judges :** Raghava Rao, J

**Bench :** Single Bench

**Advocate :** M.K. Harihara Iyer, for the Appellant; N.K. Mohanarangam Pillai, M.N. Gopalaratnam and N.K. Pattabhiraman, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Raghava Rao, J.—The question in this case on facts not in dispute is whether, in execution of the personal liability clause of a decree creating

that liability as well as a charge liability for payment of money, when the property charged is attached and sold pursuant to the attachment, a

purchaser prior to the auction sale but after the date of the decree who has no notice of the charge at the time of his purchase is affected by the

doctrine of lis pendens and is therefore bound to fail in a later suit against him in enforcement of the charge. The Court below answered the

question in the negative; the plain-tiff, the charge-holder, appeals against its judgment and decree refusing to recognise his right as superior to that

of the defendant who became the purchaser admittedly after the date of the decree in the former suit but before the plaintiff's purchase in execution

of that decree.

2. It is contended by the learned advocate for the appellant that notwithstanding

the decree and subsequently thereto the lis continued down to the date of the auction sale in the plaintiff's favour and that that sale must prevail over the defendant's purchase. The auction sale in the plaintiff's favour was, however, not in pursuance of the charge part of the decree but in execution, by way of attachment, of the personal liability part of the decree and was long after the sale in the defendant's favour. This argument cannot therefore be accepted. Reliance is placed for the appellant on the decision in *Sowbagia Ammal v. Manicka Mudaliar*, (1918) 33 M. L. J. 601: A. I. R. 1918 Mad. 668. That case, however, raised no question of lis pendens but only decided that the charge involved in a decree directing maintenance to be paid out of certain property can be enforced by a sale of the property in execution of the decree and that the decree-holder ought not to be referred to a separate suit inasmuch as the charge being one created by the decree itself, there was and could be no question of any decree obtained by the charge-holder in satisfaction of a claim arising under the decree and no question consequently of any infringement of the prohibitory provision contained in Order 34 Rule 14, Civil P. C. The Privy Council ruling in *Dutt maharaj v. Sukur Mohommed*, to which my attention has been drawn by the learned counsel for the appellant is of no assistance either, as it only recognises the applicability of doctrine of lis pendens to alienations made during the pendency of a suit later bona fide compromised and emphasises the broad principle of Section 52, T. P. Act to be that it seeks to maintain the status quo unaffected by the act of any party to the litigation pending its determination.

3. It is contended that the charge operates as in existence prior to the purchase by the defendant and that the Court below ought to have granted the alternative relief asked for in the plaint. The answer to that given by the defendant is that he is a purchaser without notice protected by Section 100, T. P. Act. I notice that there is a conflict of judicial opinion on the question whether a charge created by a decree of Court falls within the category of charges arising by operation of law as contemplated by Section 100. The Madras view, however, which is found in *Venkatachala Pillai Vs. M.R. Rajagopal Naidu and Another*, is that such a decree falls within that category. That decision is in a line with the view of the High Court of Bombay and of the Chief Court of Oudh, although in conflict with the view of

the High Court of Nagpur. I agree with that decision although only of a single Judge, Bell J., not merely because in the interests of judicial comity I should like to agree with it even if I happen to entertain a doubt about its correctness but also because I consider that it is perfectly correct. But then, the plaintiff urges, relying on *P. Rajagopala Chetty Vs. A. Kesava Pillai and Others*, , that the words ""any law for the time being in force"" occurring in the saving clause of the second part of Section 100 are sufficiently wide to take in Section 52, that the legislature could never have intended to qualify the operation of the doctrine of *lis pendens* by the amendment to Section 100 and that Section 100 cannot be read without regard to what is said in Section 63. The rulings in *A. Kulandaivelu Pillai Vs. Sowbagyammal*, and *Ramchandra Gururao Joshi Vs. Kamalabai Sheshagirirao Sarathi*, , are also cited as to the same effect. It does not appear that the cases cited related to a declaratory charge decree as distinguished from an executable charge decree; but that does not in my opinion however make any difference to the result in law. The explanation to Section 52 makes it perfectly clear that the *lis* continues till after the complete satisfaction or discharge of the decree has been obtained. It seems to me that no complete satisfaction or discharge of even a declaratory charge decree can be predicated so long as the possibility of the enforcement of the charge by way of a separate suit remains. Further, such satisfaction as may have resulted in the present case from the execution sale under the personal liability clause of the decree becomes nullified, the moment the claim of the defendant is recognised and the decree as a whole stands normally restored to executability in that view. That being so I have no hesitation in allowing this appeal with costs here and in the Court below.

4. The result is that the case will have to go back to the Court below for the passing of a preliminary decree on the basis of the alternative relief in the plaint with reference to the enforcement of the charge. The appellant is entitled to a refund of the court-fee paid on the memorandum of appeal here which he shall have.