
(1897) 04 MAD CK 0009
In the Madras High Court

Ramasami Kottadiar and Others

APPELLANT

Vs

Murugesu Madali and Others

RESPONDENT

Date of Decision : 08-04-1897

Acts Referred:

Citation : (1897) ILR (Mad) 452 : (1897) 7 MLJ 229

Judgement

1. The plaintiff's, as trustees appointed by one Venkatesa Tawker. for the payment of his debts, sued to set aside the attachment of Tawker's

property made by one of his creditors and also to set aside certain sales made under the attachment. Before the order of attachment was issued,

Tawker had applied to the Commissioner of Insolvency, Madras, to be declared an insolvent and a vesting order had been, made., Subsequent to

the issue of the attachment the insolvency petition was dismissed and the vesting order discharged. The order of attachment was not objected to,

nor was it withdrawn before the vesting order was discharged. Some of the properties attached were afterwards sold in pursuance of the

attachment and were purchased by the defendants. The rest of the property remained under attachment The plaintiffs were appointed trustees by

an instrument of the same date as the discharge of the vesting orders. They contend that the attachment having been made during the continuance

of the vesting order, the judgment-debtor had no interest on which the attachment could operate, and that it was, therefore, invalid as against them.

We do not think, that this argument is sound, The effect of the provisos to Section 7 of the Insolvency; Act (II & 12 Vic, ch. 21) was to re-vest

Tawker's property in him as from the date of the vesting order, plaintiff however, to all acts done by the assignee, or under his authority, during the

continuance, of the vesting order.

2. We think, therefore, that the attachment may properly be held to be capable of operating on Tawker's property as from the date of its first

issue; but, in any case, it must be held to have taken effect from the moment of the discharge of the vesting Order That being so, it took effect "in

any view, before the plainti acquired an interest under the trust deed. The deeree.of the Sub-Judge must, therefore, be set aside and that of the

District Munsif dismissing the suit restored. The plaintiff must pay defendants" costs throughout.

3. The suit having been disposed of on the grounds stated above, it is not necessary for us to decide the other question argued before us as to

whether Section 42 of the Specific Belief Act is a bar to the suit as framed.