

(1897) 10 MAD CK 0007
In the Madras High Court

Ramasamia Pillai

APPELLANT

Vs

Adinarayana Pillai and Others

RESPONDENT

Date of Decision : 23-10-1897

Acts Referred:

Transfer of Property Act, 1882 — Section 53

Citation : (1897) ILR (Mad) 465

Hon'ble Judges : Shephard, J; Davies, J

Bench : Division Bench

Judgement

1. On the facts found by the District Judge we do not think he was justified in his conclusion that the transaction was in fraud of creditors.

2. The Judge finds there was good consideration for the mortgage, but considers that the want of good faith brought the ease within the purview of

Section 53 of the Transfer of Property Act. The reference to good faith occurs only in the proviso to the Section.

3. It has first to be seen whether there was intent to defraud creditors within the meaning of the former part of the Section. When it is said that a

deed is not executed in good faith what is meant is that it was executed as a mere cloak, the real intention of the parties being that the ostensible

grantor should retain the benefit to himself [ex-parte Games ILR 12 Ch. D., 314 There is nothing to show that there was want of good faith in that

sense in the present case. Section 53 cannot be understood and correctly applied without reference to the English cases on which the Section is

really founded.

4. We must reverse the decree of the District Judge and restore that of the District Munsif.

5. Respondents must pay costs in both Appellate Courts.