

(1897) 08 MAD CK 0002
In the Madras High Court

Ramaswami Pillai

APPELLANT

Vs

Audinarayana Pillai and Others

RESPONDENT

Date of Decision : 23-08-1897

Acts Referred:

Citation : (1897) 7 MLJ 246

Judgement

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

Judge finds there was good cause for the mortgage, but considers that the want of good faith brought the case within the purview of Section 53 of

the Act. The reference to good faith occurs only in the proviso to the section. 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 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 plaintiff's grantor should retain the benefit to himself. (Exparte Games; in re Bamford¹)

2. 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.

3. We must reverse the decree of the District Judge and restore that of the District Munsif. Respondent must pay costs in both the Appellate

Courts.