
(1917) 09 MAD CK 0049
In the Madras High Court

Subramania Ayyar and Another

APPELLANT

Vs

A.L.V.R.R.M. Muthia Chettiar (Dead) and Others

RESPONDENT

Date of Decision : 18-09-1917

Acts Referred:

Citation : 43 Ind. Cas. 651

Hon'ble Judges : William Ayling, J;Seshagiri Aiyar, J;Bakewell, J

Bench : Full Bench

Judgement

William Ayling, J.—In this case the appellants (plaintiffs) are purchasers of the suit property from 2nd defendant by a sale-deed, Exhibit A, dated 20th June 1904. First defendant subsequent to this sale obtained a decree against 2nd defendant in Small Cause No. 1950 of 1905, and in 1913 attached the suit properties in execution. Plaintiffs preferred a claim, on the dismissal of which they filed the present suit for declaration of their title, and for cancellation of the summary order on their claim.

2. The suit failed in both the lower Courts, the Subordinate Judge holding in first appeal that the sale was a fraudulent transaction intended to defeat or delay 2nd defendant's creditors, though not a mere sham transaction.

3. It is now argued in second appeal that it is not open to 1st defendant to set up such a defence in the present suit; and that the sale must be held good against him unless and until he obtains a decree setting it aside in proceedings suitably instituted for that purpose. Mr. A. Krishnaswami Aiyar relies on a recent ruling of this Court reported as Palaniandi Chetti v. Appavu Chettair 34 Ind. Cas. 778 : 30 M.L.J. 565 : 19 M.L.T. 390 and the second appeal appears to have been specially ordered to be heard by us with a view to the correctness of this ruling being considered by a Bench of three Judges.

4. Speaking for myself, I have carefully considered the judgment in the case referred to and the arguments of Mr. Seshachariar who has endeavoured to show us that the decision is wrong. The facts are, absolutely analogous to those in the

present case. It is unnecessary for us in the present case to consider whether a suit by a creditor to avoid an alienation as infringing against Section 53 of the Transfer of Property Act must be brought in a representative capacity on behalf of the body of creditors; but, apart from this, I have no hesitation in concurring in the views expressed by Coutts Trotter and Seshagiri Aiyar, J., in that case. The only case quoted by Mr. Seshacharriar which has not been dealt with in their judgment and which appears to have any bearing on the question, is a Calcutta case not reported in the regular series [Abdul Kader v. Ali Meah 14 Ind. Cas. 715 : 15 Cri.L.J. 619 : 16 C.W.N. 717]. With all respect, I cannot agree with the decision, I do not find in it sufficient authority for (he proposition advanced by Mr. Seshacharri that anything which can be made the basis of a suit can be pleaded as a bar in action: and I agree with my learned brother Seshagiri Aiyar, J., in the case of Palaniandi Chetti v. Appavu Chettiar 34 Ind. Cas. 778 : 30 M.L.J. 565 : 19 M.L.T. 390 that a sale such as the one we are considering must be held to continue in force until it is set aside in proceedings properly instituted for the purpose.

5. It follows that the decrees of the lower Courts in the present suit should be set aside and plaintiffs be given a decree as sued for with costs throughout.

Seshagiri Aiyar, J.

6. I agree. The further arguments addressed to us by Mr. Seshacharriar have not convinced me that my view in Palaniandi Chetti v. Appavu Chettiar 34 Ind. Cas. 778 : 30 M.L.J. 565 : 19 M.L.T. 390 is wrong, and that an attaching creditor as defendant can obtain a declaration that the sale by his judgment-debtor which he has not sued to set aside, is in fraud of his and other claims against the common judgment-debtor, and that on that ground the suit should be dismissed.

Bakewbll, J.

7. I agree.