

## APPELLATE CIVIL.

*Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.*

1897.  
April 7, 8.

RAMASAMI KOTTADIAR AND OTHERS (DEFENDANTS), APPELLANTS,

v.

MURUGESA MUDALI AND OTHERS (PLAINTIFFS), RESPONDENTS.\*

*Insolvent—Vesting order—Subsequent attachment—Dismissal of insolvency petition—Creditors' trustees.*

A judgment-debtor was declared an insolvent by the Court for the Relief of Insolvent Debtors, Madras, and a vesting order was made. Part of his property was subsequently attached in execution of a decree. Afterwards, his petition in insolvency was dismissed and the vesting order discharged. On the same date a creditor's trust deed was executed, of which the plaintiffs were the trustees. They now sued to set aside the proceedings in execution and to cancel the sale of the property which had been sold in execution after the date of the trust deed:

*Held*, that the suit was not maintainable.

SECOND APPEAL against the decree of T. Ramachandra Rau, Subordinate Judge of Trichinopoly, in Appeal Suit No. 165 of 1892, reversing the decree of T. M. Rangachariar, District Munsif of Trichinopoly, in Original Suit No. 377 of 1890.

The plaint set forth that certain immovable properties now in question belonged to Venkatesa Tawker; that he applied to the High Court, Madras, on 11th January 1888, to be declared insolvent, whereupon, on the same day, the High Court passed an order vesting the properties in the Official Assignee; that, subsequently, Venkatesa Tawker entered into an arrangement with his creditors, by which the plaintiffs and one Rangachariar were appointed trustees for the purpose of clearing off all his debts; that, under the composition deed (which was executed on 17th December 1888), the properties in question passed from the Official Assignee to the trustees with the consent of the majority of the creditors; that first defendant, one of the creditors, in execution of his decree against Venkatesa Tawker, attached the properties now in question on the 23rd January and 7th February 1888; that plaintiffs applied to have the attachment cancelled, but their application was dismissed on 3rd July 1889; that the properties were then brought to sale with the result that first defendant bought

\* \* Second Appeal No. 1723 of 1895.

item 1, second defendant 2nd item, and third defendant 5th item. Plaintiffs therefore prayed that the proceedings in execution should be set aside and the sale cancelled.

The District Munsif dismissed the suit, but his decree was reversed on appeal by the Subordinate Judge, who decided in favour of the plaintiffs.

The defendants preferred this second appeal.

*Krishnasami Ayyar* for appellants.

*Tiagaraja Ayyar* for respondent No. 1.

JUDGMENT.—The plaintiffs 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 order. 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 proviso to section 7 of the Insolvency Act (11 & 12 Vic., Cap. 21) was to re-vest Tawker's property in him as from the date of the vesting order, subject, however, to all acts done by the assignee, or under his authority, during the continuance of the vesting order.

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 plaintiffs acquired an interest under the trust deed. The decree of the Sub-Judge must, therefore, be set aside, and that of the

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District Munsif dismissing the suit restored. The plaintiffs must pay defendants' costs throughout. 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 Relief Act is a bar to the suit as framed.

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## APPELLATE CIVIL.

*Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.*

1897.  
April 9, 13.

SANKARA SUBBAYYAR (DEFENDANT No. 2), APPELLANT,

v.

RAMASAMI AYYANGAR AND ANOTHER (PLAINTIFF AND  
DEFENDANT No. 1), RESPONDENTS.\*

*Inam attached to the hereditary office of nattamgar—Enfranchisement of inam lands in favour of two persons—Suit by the holder of the office to recover land.*

Inam lands constituting the emolument of the office of nattamgar, was enfranchised in favour of the plaintiff and defendant separately. In November 1890 the defendant was informed that a patta for half of the lands would be issued in his name, and it was so issued in the following May. In April 1891 (after the resolution to enfranchise the land was come to) the plaintiff was appointed to be the sole nattamgar, and he now sued in 1894 for the cancellation of the enfranchisement patta issued to the defendant, and for the issue of a patta in his own name in respect of the lands comprised therein and for possession of the lands:

*Held, that the plaintiff was not entitled to the relief sought.*

SECOND APPEAL against the decree of W. Dumergue, District Judge of Madura, in Appeal Suit No. 446 of 1895, reversing the decree of V. Kuppasami Ayyar, District Munsif of Tirumangalam, in Original Suit No. 56 of 1894.

The plaintiff sued to recover certain land which formed part of the emoluments attached to the hereditary office of nattamgar in the village of Thadayampatti held by him.

The office of nattamgar in the village of Thadayampatti was jointly held, from the time of the *faisal* until 1873, by two persons, members of different families, of which the plaintiff and the second defendant were the respective representatives, and the *manibam* lands were enjoyed in equal shares by the office holders. In 1873

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\* Second Appeal No. 547 of 1896.