

APPELLATE CIVIL.

Before Mr. Justice Ramesam and Mr. Justice Jackson.

KRISHNASWAMI NAIDU (PETITIONER—ASSIGNEE
DECREE-HOLDER), APPELLANT,

1927,
November
30.

v.

ANDI CHETTI AND OTHERS (DEFENDANTS), RESPONDENTS*.

Indian Companies Act (VII of 1913)—Liquidators—Dissolution of Company—Liquidator, officer of the Company—Functus officio, after dissolution—Transfer of decree, by auction by liquidator before dissolution—Document of transfer, executed by liquidator after dissolution—Validity of document. Civil Procedure Code (Act V of 1908), O. XXI, r. 16.

Though the liquidator of a company is an officer of the Company and becomes *functus officio* when the Company has been dissolved, still he can, after he became *functus officio*, complete a formal act like executing a document in writing for the transfer of a decree which had been already transferred by him by auction, while he was a liquidator.

A decree is not an actionable claim under the Transfer of Property Act, and therefore an assignment of a decree need not be in writing. Though the transfer of a decree is valid even without a written document, a document can be executed by a liquidator after dissolution of the Company, to complete a transfer of the decree, so as to satisfy the requirements of Order XXI, rule 16 of the Civil Procedure Code, for purposes of execution.

APPEAL against the order of the District Court of Coimbatore in Civil Appeal No. 117 of 1924, preferred against the order of the District Munsif of Coimbatore in Civil Miscellaneous Petition No. 871 of 1923 in Original Suit No. 559 of 1926.

The material facts appear from the judgment.

V. Narasimha Ayyangar for appellant.

T. M. Krishnaswami Ayyar and *M. Krishna Bharathi* for respondent.

* Civil Miscellaneous Second Appeal No. 79 of 1925.

KRISHNA-
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v.
ANDI
CHETTI.

JUDGMENT.

The decision in *Ramachandra Rau v. Kandasami Chetti*(1), cited by the Court below and those relied on in it, *In re Pinto Silver Mining Company*(2), and *In re London and Caledonian Marine Insurance Company*(3), as well as other cases show, that when a company has been dissolved, it ceases to exist for all purposes and its officers are *functus officio*, that a liquidator is also an officer of the company and becomes *functus officio* (Vide *Re The Westborne Grove Drapery Company Limited*)(4), and *Coxon v. Gorst*(5). But, assuming that it is so, the question still arises whether he cannot complete a formal act like giving a transfer in writing for a decree which has been already transferred.

In the present case, the decree was transferred by auction on 1st February 1922 when the company was not dissolved. It has been held in *Afzal v. Ram Kumar Bhudra*(6), *Dagdu v. Vanji*(7), and *Govindarajulu Naidu v. Ranga Rao*(8), and we see no reason to depart from the view adopted by these decisions—that a decree is not an actionable claim within the meaning of the Transfer of Property Act and therefore an assignment of a decree need not be in writing. It follows that the assignment was valid and complete. But for purposes of execution under the Civil Procedure Code, Order XXI, Rule 16, requires the transfer to be in writing. This writing has since been given by the Original Transferor after he has ceased to be liquidator. There is nothing in the Companies Act or in the decisions on it which prohibits him from doing so or which compels us to regard it as void seeing that the original transfer

(1) (1895) I.L.R., 18 Mad., 498.

(3) (1879) 2 Ch. D., 140.

(5) [1891] 2 Ch., 73.

(7) (1900) I.L.R., 24 Bom., 502.

(2) (1878) 8 Ch. D., 273.

(4) (1878) 39 L.T., at p. 30.

(6) (1886) I.L.R., 12 Cal., 610.

(8) (1921) 40 M.L.J., 124.

was effected by him at a time when he was liquidator. Whatever looseness or irregularity there may be in such a procedure neither the company nor its shareholders complain of it and we do not see how a person in the position of a judgment-debtor should be allowed to do so.

The result is that the application of 2nd July 1923 was a proper application and though not represented immediately after having been amended, was a step in aid for execution.

The present application is therefore in time. The appeal is allowed with costs here and in the Lower Appellate Court. The appellant will be permitted to proceed with the execution of the decree in accordance with law. Costs in the first Court will abide the result.

K.R.

KRISHNA-
SWAMI
NAIDU
v.
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CHETTI.

APPELLATE CIVIL.

Before Mr. Justice Ramesam and Mr. Justice Jackson.

GOPALAKRISHNASWAMI NAICKER (PETITIONER),
PETITIONER,

1927,
December 19.

v.

V. SRINIVASA AYYANGAR AND OTHERS (RESPONDENTS),
RESPONDENTS.*

Guardians and Wards Act (VIII of 1890), ss. 34 (a), (d), 35 and 36—Application to District Court by ward, after attaining majority, for assignment bond executed by guardian and sureties—Jurisdiction of Court to assign—Inquiry by Court—Prima facie inquiry into accounts—Duty of Court to inquire.

Where an application is made to a District Court by a ward after attaining majority, for the assignment of a bond executed

* Civil Revision Petition No. 366 of 1927.