

**Appellate Jurisdiction. (a)***Special Appeal No. 416 of 1869.*PULLEN CHETTY.....*Special Appellant.*RAMALINGA CHETTY.....*Special Respondent.*

A sale made of immoveable property pending a suit against the vendors to recover a debt is valid although the motive of the vendors may have been to prevent the land being attached and sold in execution.

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**T**HIS was a Special Appeal from the decision of G. Muttuswamy Chetty, the Principal Sadr Amin of Madura, in Regular Appeal No. 26 of 1868, modifying the decree of the Court of the District Munsif of Paramagudy, in Original Suit No. 124 of 1867.

This suit was brought to establish the plaintiff's right to  $43\frac{1}{8}$  gulies of punjah land under a bill of sale executed in his favor by the 2nd defendant with the concurrence of his undivided paternal uncles, the 3rd and 4th defendants, on the 12th September 1865, and to restrain the 1st defendant from interfering with his enjoyment of the said land by right of purchase in an auction held by the order of the Principal Sadr Amin's Court in execution of the decree in Original suit No. 129 of 1863. The plaintiff represented that the said land as well as others was the joint-property of the 2nd, 3rd and 4th defendants, of whom the 2nd, who was the managing member of the family, disposed of them with the concurrence of his uncles, the 3rd and 4th defendants, in order to raise funds to meet some urgent exigency; that subsequently the land in dispute was seized in execution of a judgment-debt due by the 3rd and 4th defendants under an order of this Court and sold to the 1st defendant in satisfaction of the said debt; and that as the bill of sale in favor of the plaintiff was regularly passed for good and valuable consideration, the present suit was filed to establish his right to the said land under it.

The 1st defendant denied the validity of the bill of sale on which the plaintiff founded his claim, inasmuch as the 2nd defendant was not the managing member of the family, and as the sale in the plaintiff's favor was effected with a fraudu-

(a) Present: Scotland, C. J. and Innes, J.

lent object in violation of an order issued on the 21st August 1863 by the late Principal Sadr Amin during the trial of Original Suit No. 129 of 1863 prohibiting the 3rd and 4th defendants from alienating any portion of their family property to defeat the execution of the ultimate judgment that might be passed in the case.

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The 2nd, 3rd and 4th defendants did not enter appearance.

The District Munsif found for the plaintiff.

The 1st defendant appealed.

The Principal Sadr Amin's judgment was as follows :—

I am unable to concur in the conclusions arrived at by the Lower Court on the questions at issue between the parties. In 1863, the present 1st defendant filed Original Suit No. 129 on the file of this Court for the recovery of Rupees 2,503-5-4 from the present 3rd and 4th defendants, and immediately afterwards obtained an order, Exhibit No. I, forbidding the said defendants from disposing of any portion of their property with a view of defeating the execution of the ultimate judgment that might be passed in the said case. The 3rd and 4th defendants thereupon agreed to furnish any security that the Court might require for the performance of the ultimate judgment; but their offer was not accepted by the late Principal Sadr Amin (see Exhibit C), so that the notice directing the 3rd and 4th defendants not to alienate their property to the prejudice of the 1st defendant was in force in September 1865, when the bill of sale sued on was executed by the 2nd defendant alone to the plaintiff. The decree in the former suit was passed on the 18th July 1864, and adjudged the 3rd and 4th defendants to pay to the 1st defendant the amount claimed by him. As it is clear that the 3rd and 4th defendants were, on the date of the transfer of the disputed land by their nephew, restrained by the order of this Court above quoted from alienating the same, they were legally incompetent to take any part in the transaction on which the plaintiff founds his claim, and the assent alleged to have been accorded by them to the same is not, in my opinion, sufficient to render the transfer valid so far as the interests of the said two brothers were concerned. There is

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also nothing in the record to show that the 2nd defendant, who is a mere boy, had the sole management of the family in preference to his uncles, who, as senior members of the family, were entitled to look after its affairs, or that the alienation was effected by him for the benefit of the family or for raising funds to meet any exigency. The witnesses for the prosecution also admit that the whole amount of the consideration was not paid in the presence of them. In fact the whole transaction appears to have been concluded with the object of preventing the 1st defendant from seizing the disputed land in execution of the decree passed in his favor. I therefore, in modification of the decree of the Lower Court, reject the plaintiff's claim to two-thirds of the land sued for, being the shares of the 3rd and 4th defendants, the judgment-debtors in Original Suit No. 129 of 1863. The plaintiff will pay his own and the 1st defendant's costs.

Plaintiff appealed specially to the High Court of Madras against the decree of the Principal Sadr Amin's Court of Madura, on the ground :—

That the Principal Sadr Amin was wrong in law in finding that the sale to the plaintiff was invalid for the reasons set out in his judgment.

*Mayne*, for the special appellant, the plaintiff.

*Rama Row*, for the special respondent, the 1st defendant.

The Court delivered the following

JUDGMENT:—The question for determination in this appeal is whether the sale made to the plaintiff of the 3rd and 4th defendants' right to the land in dispute pending a suit against them for a debt is valid as against the first defendant who purchased the same right at a sale in execution of the decree obtained in the suit.

The Principal Sadr Amin, reversing the decree of the Court of First Instance, has held the sale to be invalid, and the ground of his decision appears to be that it was made after the order in the suit of the 21st August 1863, (Exhibit No. 1) had been served upon the 3rd and 4th defendants, and with the object of preventing their interest in the land from being sold in execution to satisfy the debt.

We are of opinion that this decision is wrong. The proceeding in which the order of the 21st August appears to have been taken with a view to the defendants' furnishing security or, on their failing to do so, the attachment of the land ; but for some unexplained cause it effected neither of these objects. The order does not purport to affect, nor did it in any way affect, the proprietary right of the 3th and 4th defendants. It was of no avail therefore to prevent an effectual complete disposition of such right.

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The only question is whether the sale was a real transfer of the title to the land for a fair money consideration paid by the plaintiff, and we understand both the Lower Courts to have so found. That being the case it is immaterial that the motive of the vendors was to prevent the land being attached and sold in execution. The rule of law applicable to the case is fully pointed out in the decisions reported in the *Madras High Court Reports, 3rd Vol., 231, and 4th Vol., 84.*

The decree of the Principal Sadr Amin should therefore, we think, be reversed and that of the Court of First Instance confirmed, and the plaintiff's costs in this appeal and in the Lower Appellate Court paid by the 1st defendant.

*Appeal allowed.*

### Appellate Jurisdiction. (a)

*Referred Case No. 33 of 1870.*

Arrears of Yeomiah pension due to the estate of a deceased Yeomiahdar which have accidentally accumulated are not subject to attachment in satisfaction of a decree of a Civil Court obtained against the representatives of the Yeomiahdar.

**T**HIS was a case referred for the opinion of the High Court by H. P. Gordon, the Acting Judge of the Court of Small Causes at Chittoor, in Motion No. 574 of 1870:—

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July 8.  
R. C. No. 33  
of 1870.

This is an application for an order directing the Deputy Collector in charge of the Treasury at Chittoor to pay to motioner (decree holder in Suit 1113 of 1869 on the file of this Court) the sum of Rupees 441-11-2 being arrears of Yeomiah pension due to one Sharfoonissa Yeomiah, pensioner No. 91 deceased, in deposit in the hands of the Deputy Collector.

(a) Present : Scotland, C. J. and Holloway, J.