

(1930) 08 MAD CK 0026
In the Madras High Court

A.R.S.P. Subramanian Chetti

APPELLANT

Vs

Official Assignee of Madras

RESPONDENT

Date of Decision : 21-08-1930

Acts Referred:

Citation : AIR 1931 Mad 603(1)

Hon'ble Judges : Curgenven, J

Bench : Division Bench

Judgement

Curgenven, J.—This appeal is filed against an order passed by Kumara-swami Sattri, J., in insolvency, setting aside a deed of transfer executed by the Official Assignee in respect of five decrees, part of the assets of the insolvent, in Petition No. 127 of 1925. The first of these decrees, in O.S. No. 318 of 1924, was, with costs and interest up to 1924, for a sum of Rs. 771-13-0 and, with appellate costs and further interest, would amount in face value at the time of the transaction to some eight or nine hundred rupees. The remaining four decrees were nominally worth in all about Rs. 170, but it is only with the decree in O.S. No. 318 of 1924 that we are substantially concerned. The insolvent was a widow and had two brothers, Subramania Chetti and Palaniappa Chetti. The latter of these, it is admitted, was managing her estate; it was to the former, Subramania Chetti, that the deed of transfer was executed by the Official Assignee, Mr. Wilson, on 25th April 1928. The notice of motion to set aside the transfer was filed by Mr. Albuquerque, who was the acting Official Assignee, during Mr. Wilson's absence, on 27th July 1928. But as this gentleman does not seem to have been conversant at first hand with the facts, we may turn to Mr. Wilson's own report dated 6th October 1928 for a statement of his case. According to this, in March 1928, Mr. P.V. Sudarsana Raju, an advocate, came and represented to him on behalf of his client that the decrees were " unrealizable " and were not worth even 20 per cent of their face value but that his client was willing to give that proportion of their nominal value for them. It was not disclosed to him that the intending purchaser was a brother of Palaniappa Chetti who was managing the properties, nor was the fact disclosed that in respect of the decree in O.S.

No. 318 of 1924 the whole amount was secured. After recording some depositions and admitting some documentary evidence, the learned Judge, starting with the admission that security for the full amount had in fact been given for the decree in question, found that that circumstance had been withheld from Mr. Wilson in the negotiations before the purchase, that on the other hand representation had been made that the decrees were not recoverable, except to a small extent, and that in these circumstances the transfer must be set aside.

2. Although some attempt has been made before us to suggest doubt as to the completeness of the security, we must, I think, accept the very clear admission recorded on this point by the learned Judge. It has not been contested that the security was required and given as a condition of setting aside an ex parte decree previously passed in O.S. 318 and the presumption, which remained unrebutted, is that the Court satisfied itself that the security offered was sufficient. Accordingly, the full value of this decree would be recoverable in execution. Did the transferee know of this circumstance? It has been said that he is a brother of the insolvent herself, who was the decree-holder, and of Palaniappa Chetti, who was managing her affairs. An attempt was made, by filing two documents, Exs. A and B, to show that the transferee himself had taken a hand in the management, but nothing very definite can be gleaned from these records, and the learned Judge does not seem to have relied upon them. There are two witnesses who say that the transferee Subramania Chetty and Palaniappa Chetty are undivided. Palaniappa Chetty himself, although he asserts a divided status, admits that there is no partition document and that there are still some properties to be divided. Even accepting his evidence as true, the inference appears to us legitimate that this brother must have known the true facts about this decree, and since he himself abstained from entering the box this conclusion becomes irresistible. Moreover, it is the appellant's own case that Mr. Sudarsana Raju, as this gentleman states in his evidence, informed Mr. Wilson that there was "some security" for this decree. Guarded though this admission is, it shows clearly enough that the existence of the security was known.

3. This brings us to the next point: What were the representations made? The learned Judge has found himself unable to accept Mr. Sudarsana Raju's assertion that he mentioned the fact of security, in face of Mr. Wilson's denial that any such disclosure was made. On 9th March Mr. Wilson wrote a letter (Ex, C-2) to the vakil at Sivaganga who was acting as his local agent in the insolvency, informing him of the offer of 20 per cent, and asking what was the exact amount due under the decrees to date. It seems improbable that, had this matter of security been brought to his notice, he would not have referred to it in this letter or in a later letter Ex. 0-1, to the same vakil. Further, if he had been aware of the fact, he would not have sold all the decrees for Rs. 250. On this point therefore we think "that the learned Judge's conclusion is plainly right. Mr. Sudarsana Raju admits that the offer was made of only 20 per cent of the face value of the decrees, and it is only compatible with the nature of this offer that he should have

represented, as Mr. Wilson says that he did, that the decrees were "unrealizable," or "worth practically nothing." We have then to see whether these statements, made with the knowledge which must be imputed to the advocate, and his client, amounted to "fraud" as defined in Section 17, Contract Act, whether they constituted:

the active concealment of a fact by one having knowledge or belief of the fact.

4. To the section is appended an explanation which says:

Mere silence as to the facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

5. Now it cannot we think be successfully maintained that the transferee was so placed, as the brother of the insolvent and her manager, as to be under a duty to reveal the truth. His relationship no doubt gave him access to inside knowledge, but he occupied no fiduciary position towards the Official Assignee, and in the application of this explanation he must be regarded as no more than a third party. Even so regarding him, however, it seems impossible to hold that what passed at the interview between Mr. Wilson and Mr. Sudarsana Raju amounted to no more than "mere silence" about the existence of the security. The law has been thus stated by Lord Selbourne in *Coaks v. Boswell* [1866] 11 A.C. 235. We take the quotations from *Kerr on Fraud and Mistake*, Edn. 6, p. 77:

Inasmuch as a purchaser, generally speaking, is under no antecedent obligation to communicate to his vendor facts which may influence his own conduct or judgment when bargaining for his own interest, no deceit can be implied from his mere silence, unless he undertakes or professes to communicate them. This however he may be held to do if he makes some other communication which, without the addition of those facts, would be necessarily or naturally or probably misleading. If it is found just conclusion that he did this intentionally, and with a view to mislead on any material point, that is fraud, and it is a sufficient ground for setting aside a contract if the vendor was in fact so misled.

6. Accepting the evidence that, coupled with the offer of 20 per cent of the face value, a statement was made to the effect that the amounts due under these decrees were largely irrecoverable what can that be called other than a communication which would be necessarily or naturally or probably misleading? True, a mere assertion of value, or disparagement of the property is not necessarily fraud (*Kerr*, p. 57), but here we are inclined to think that even the offer of 20 per cent carried with it an implication that was necessarily misleading. The value of many kinds of property may be no more than a matter of opinion, but a secured decree has a fixed value, and an offer of one-fifth of its value could only be on the implied footing that it was unsecured:

It is often fallaciously assumed that a statement of opinion cannot involve a

statement of fact. But if the facts are not equally known to both sides, a statement of opinion by the one who knows the facts best often involves a statement of a material fact, for he implicitly states that he knows facts which justify his opinion" Kerr, p. 52.

7. We have been referred by Mr. K.S. Krishnaswami Iyengar for the appellant to a passage in the judgment of Lord Brougham in *Attwood v. Small* [1835] 7 E.R. 684 for another statement of the principles which should govern a case of this nature. After observing that general fraudulent conduct and attempts to overreach may go for nothing, His Lordship goes on:

It must be shown that the attempt was made, and made with success, cum fructu. The party must not only have been minded to overreach, but ha must actually have overreached. He must not only have given instructions to the agent to deceive, but the agent must, in fulfilment of his directions, have made a misrepresentation; and moreover, the representation so made must have had the effect of deceiving the purchaser; and moreover, the purchaser must have trusted to that representation, and not to his own acumen, not to his own perspicuity, not to inquiries of his own. I will not say that the two might not be mixed up together, the false "representation of the seller and the inquiries of the buyer, in such a way as even then to give a right to relief...

8. We do not find anything in these observations to lead us to reconsider the view that in the present case there was a deliberate and successful attempt to mislead, which materially affected the bargain; and that therefore there was "fraud" within the meaning of Section 17, Contract Act.

9. The closing words of Lord Brougham"s remarks have a bearing upon the last point argued. It is said that Mr. Wilson, after the interview, made his own inquiries into the value of these decrees, a circumstance which acquits the appellant of all responsibility. The position is thus stated in Kerr (p. 49):

A misrepresentation to be of any avail whatever must enure to the date of the transaction in question. If a man to whom a representation has been made knows at the time or discovers before entering into the" transaction that the representation is false or resorts to other means of knowledge open to him, and chooses to judge for himself in the matter, he cannot avail himself of the fact that there has been a misrepresentation, or say that he has acted on the faith of the representation.

10. The learned author goes on to exemplify this principle by summarizing the case of *Attwood v. Small*, above referred to, where an iron company contemplating the purchase of a property including mines and iron works received certain representations from the vendor and deputed some of the directors to verify them. These directors reported after a local investigation that the statements were correct, and the purchase was effected. It was afterwards found that the statements were untrue, though the inquiry had failed to expose them. The House of Lords held, on the principle already explained, that the

contrast could not be rescinded. It will be clear however from a perusal of the judgments that the mere circumstance of some inquiry, or attempt at inquiry, having been made will not necessarily bar rescission, so that we turn now to see what did occur in the present case.

11. On 9th March Mr. Wilson wrote to the vakil at Sivaganga, informing him of the offer made, and asking what was the exact amount due under the decrees up to date, and what was likely to be recovered on them. The vakil replied on 30th March, but, so far as the decree in O.S. 318 was concerned, only answered the former of these two questions, and made no allusion to the prospects of recovering the amount due under it. There is another letter from the Official Assignee, dated 11th April (Ex. C-I), and in this, in reply to a request from the vakil for further particulars retired if the decrees were to be executed, he asks for the names of the parties to the decrees, so that he may get the information and adds:

Or you can yourself correspond with my. agent Mr. M. G. Govindavarada Ayyangar at Muraiyur for these particulars.

12. It seems that there was no further exchange of letters probably because the vakil's proposal was to execute, whereas a fortnight after Mr. Wilson wrote his second letter he sold the decrees to the appellant. Not much further light is thrown upon this part of the case by Mr. Wilson's evidence. The letters must speak for themselves. He acknowledges that he thought it necessary to write to the vakil and says that he asked him whether the price offered was fair, though the correspondence shows that in this form the question was not put. We may take it therefore we think, that nothing was done to answer the original question, "What is likely to be recovered?" It seems plain that Mr. Wilson abandoned the inquiry, and decided to dispose of the decree as property of purely speculative value.

13. It will thus be seen that not only was there no enquiry into the real value of the decrees, which distinguishes this case from *Attwood v. Small*. but there is no reason to suppose that if inquiry had been made it could reasonably be expected to have gone further than an investigation into the substance of the judgment-debtors. There was no ground to suspect that the decree in O.S. 318, which was on the face of it an unsecured decree for money, was in fact secured; and, as the learned trial Judge says, there was nothing to put the Official Assignee or his vakil on notice, or to prompt a search of the records. It was a fact so latent as to be beyond the scope of such an inquiry as Mr. Wilton must have intended by his question to set on foot. That being so, and it being clear that the transfer was completed upon the representations made on behalf of the appellant, we cannot find that what took place avails to relieve him of the consequences" of these representations.

14. We accordingly dismiss the appeal with costs.