
(1906) 07 MAD CK 0011
In the Madras High Court

Chidambaram Chettiar

APPELLANT

Vs

Sami Aiyar alias Arunachalam Aiyar and Others

RESPONDENT

Date of Decision : 18-07-1906

Acts Referred:

Transfer of Property Act, 1882 — Section 53

Citation : (1907) ILR (Mad) 8 : (1906) 16 MLJ 427

Judgement

1. These appeals raise the question of the validity of the assignment of a decree obtained by one Swami Iyer in O.S. No. 12 of 1899 on the file of

the Subordinate Court of Kumbakonam to one Annamalai Chetti through whom the appellant claims as against other ""creditors of Swami Iyer who

are the respondents. The facts are that a sum of over Rs. 14,000 was held in deposit by the Court to the credit of Swami Iyer as decree-holder in

O.S. No. 12 of 1899. Swami Iyer was himself indebted to various persons, and some of them obtained decrees against him for the sums due.

Annamalai Chetti was one of the decree-holders (O.S. No. 93 of 1899) and he obtained Exhibit A, dated the 28th March 1900, from Swami

Iyer, whereby the latter purported to assign to him his rights under the decree in O.S. No. 12 of 1899. The consideration for the assignment

recited in the deed, viz., Rs. 15,000, was stated to consist of (1) Rs. 4,390 principal, interests and costs due to Annamalai's firm under the decree

already referred to (O.S. No. 93 of 1899), (2) Rs. 1,650 or so due to Lakshmana Chetty in suit No. 65 of 1899, (3) Rs. 1,185 due to

Srinjvasaiyar under, promissory note C, (4) a cash payment of Rs. 7,775 before the Sub-Registrar.

2. Though the last mentioned sum was paid before the Sub-Registrar, admittedly Annamalai took back the amount, and on the 3rd April 1900 he

and Swami Iyer entered into an arrangement which purports to be set cut in Exhibit D. According to it Rs. 610 was paid to Swami Iyer himself,

Rs. 270 to one C. Krishnaswami Iyer, Rs. 57 into Court, Rs. 1,000 to the present appellant, Chidambaram Chetti, and Rs. 5,838 to a dancing girl

named Balamani.

3. There is no doubt that the sums of Rs. 4,390 and Rs. 1,650, stated to have ""been paid to the decree-holder were really due, and they entered

satisfaction for the same. The, Subordinate Judge in effect found that the payment to C. Krishnaswami Iyer, was also due, and we think that the

weight of evidence is in favour of the view that the sum of Rs. 1,185 was due, and was paid, to K. Srinivasaier.

4. But as regards the remainder (over Rs. 7,000) we agree with the Subordinate Judge that the case set up on behalf of the appellant is fictitious.

Rs. 5,838 is said to have been paid to Balemani on account of money borrowed from her by Swami Iyer.

5. The sole evidence in support of the plea is the statement of Balamani herself. Her evidence is vague and indefinite and is entirely unsupported by

any accounts or vouchers and it is highly improbable in view of the relation existing between them that she would have lent any money, or at all

events so large a sum to Swami Iyer.

6. We are equally satisfied that no money was due to Chidambaram. We think that there can be no doubt that the arrangement effected by the

assignment though partly entered into for the purpose of discharging debts really due by Swami Iyer, was, also clearly intended to secure a sum of

over Rs. 7,000 to the as signor himself or to persons in whom he was interested but who: were not his creditors. Admittedly, Swami Iyer was at

that time in pecuniary embarrassments. His only property was the sum to-his credit in C.S. No. 12 of 1899. The assignment, therefore, operated

to screen some 50 per cent of his assets from being taken by his other creditors. Annaimalai admits that he knew of the existence of those other

creditors and; that they were pressing for payment. On the very day of the alleged arrangement with Swami Iyer, and OB; the following day two

of, these creditors, obtained orders for the attachment before judgment of the sum to the credit of Swami Iyer in C.S. No. 12 of 1899 and other

attachments were issued soon afterwards. Having regard to the fact that at this

time Swami Iyer, Annamalai and Chidambaram Chetty were all paramours of the dancing girl Balamani, and on; friendly terms with each other we cannot doubt that the arrangement was, to the extent we have stated, a device intended to defeat Swami Iyer's other creditors.

7. In this view the next question for decision is whether the assignment to Annamalai is valid as against the respondents.

8. The property sought to be assigned not being Immovable property, Section 53 of the Transfer of Property Act has no direct application and we

must decide the question by a reference to general principles of justice, equity and good conscience. As observed by the Judicial Committee of the

Privy Council in *Corlett v. Radcliffe* 14 Moo. P.C. 121 : s.c. 15 E.R. 251 "each case must depend upon its own circumstances and in all the

question is one of fact, whether the transaction was bona fide or was a contrivance to defraud creditors." It may however, be stated generally that

a deed is void against creditors when the debtor is in a state of insolvency or when the effect of the deed is to have the debtor without the means of

paying his present⁸ debts. If this is the condition of the debtor or the consequence of his act, it is not sufficient to render a deed valid that it should

be made upon good consideration, for as it is said in *Twyne's case* (3 Co. 82) "a good consideration does not suffice if it be not also bona fide.

This statement of the law is sufficient to support the conclusion of the Sub-ordinate Judge that the assignment was invalid. As, however, Mr.

Krishnaswami Iyer on behalf of the appellant strongly contended that the last paragraph of Section 53 of the Transfer of Property Act as

interpreted by this Court in *Ramasamia Pillai v. Adinarayana Pillai* ILR(1897) M. 465 warrants a different view being taken, we shall briefly deal

with his contention. In effect his contention is that wherever there is any real consideration, however small, for the transfer, the question of intention

is immaterial and the transaction must be held to be one entered in good faith and therefore not invalid as against creditors; either under the statute,

13 Elizabeth C. 5, or u/s 53 of the Transfer of Property Act, even though it was in fact intended to delay or defeat creditors and had the intended

effect. This contention is, we think, on the face of it unsustainable for the simple reason that under both enactments good faith as well as

consideration is made, in terms, an essential condition of the validity of the

transfer. This has been pointed out again and again both in the decisions of the Courts and by the text-writers referred to by Mr. Sivaswami Iyer in his reply for the respondents. See *Corlett v. Radcliffe* 14 Moo. P. 121

(136) : s.c. 15 E.R. 251 already cited, *Bott v. Smith* 21 Beav. 511 : s.c. 52 E.R. 957, *In re Johnson - Golden v. Gillam* 20 Ch.D. 389, *Exparte*

Chaplin In re Sinclair L.R. 26 Ch.D. 319 *Exparte Johnson In re Chapman* 26 Ch.D. 228 per *Fry L.J. Smith's Leading Cases*, Eleventh edition,

Vol. I, pages 16 and 17, *May's Fraudulent Transfers (May on Fraudulent and Voluntary Dispositions of Property)*, page 85. See also

Ramchdhooldas v. Chunilal (1903) 5 Bom. L.R. 213. As regards the passage at page 466 of the case reported in ILR Mad the Judges appear to

have merely intended to repeat the language of *Thesiger, L.J. in Exparte Garnet* which again refers to *Allen v. Bonnet* L.R. 5 Ch. 577.

9. In neither of these two cases was the statement intended to give an exhaustive explanation of the term *Bonafide* in connection with such

transactions. In both, the Judges were dealing with mortgages, and what they said was that where a mortgage was granted for a sum really due, the

transaction could not be impeached except upon the ground that the transaction though in form a mortgage, was in truth a trust in favour of the

debtor and thus a mere cloak to secure an advantage to him.

10. In effect they were referring to the condition of things which was dealt with by Lord Coke in *Twyne's* case when he said thus : ""If a man be

indebted to five several persons in the several sums of $\text{£}1\frac{1}{2}20$, and hath goods of the value of $\text{£}1\frac{1}{2}20$ and makes a gift of all his goods to one of

them in satisfaction of his debt, but there is a trust between them that the donee shall deal favourably with him in regard of his poor estate, either to

permit the donor or some other person for him or for his benefit to use or have possession of them, and is contented that he shall pay him his debt

when he is able; this shall not be called bona fide within the said proviso; for the proviso saith on a good consideration and bona fide; so a good

consideration doth not suffice if it be not also bona fide.

11. It is scarcely necessary to add that there is nothing in the statute of Elizabeth or in Section 53, Transfer of Property Act, to prevent a creditor

giving a preference provided nothing more is done by the transaction either with reference to the transferor or transferee so as to injuriously affect

the creditors of the former. Another argument of Mr. Krishnaswami Iyer for the appellant was that to the extent of payments made by Annamalai

on behalf of Swami Iyer's creditors the assignment should be held good and the appellant should be allowed to execute the decree as if he were a

joint creditor with Swami Iyer. We cannot accede to this argument.

12. The transaction being entirely invalid as against the creditors, we cannot allow it to be treated as partly valid. It is open to the appellant to

protect himself by discharging the claims of Swami Iyer's other creditors at whose instance the transaction is voidable.

13. We, therefore, dismiss both the appeals With costs.