
(1912) 09 MAD CK 0055
In the Madras High Court

Gollapudi Venkatakrishnama Chetti and Another APPELLANT
Vs
Lakshmi Narasimham and Others RESPONDENT

Date of Decision : 17-09-1912

Acts Referred:

Provincial Insolvency Act, 1920 — Section 24

Citation : 17 Ind. Cas. 393(1)

Hon'ble Judges : Ralph Benson, O.C.J.; Sankaran Nair, J

Bench : Division Bench

Judgement

1. The question is whether the mortgage by deposit of title-deeds is fraudulent within the meaning of Section 24 of the Insolvency Act, 11 and 12, Victoria, C. 21.

2. A promissory-note was executed and the title-deeds were deposited to secure the amount of the note on the 10th August 1908 by the Insolvents, Cantham & Co., defendants Nos. 1 to 4. They carried on their business on the 11th, the 12th was holiday. On the 13th, it was found that they had absconded and a creditor presented a petition of adjudication the same day. The insolvents have not appeared since.

3. The promissory-note is for a sum of Rs. 20,962.1-6. This is made up as follows:

Rupees 6,500 is alleged to have been paid by the plaintiffs at the time of the execution of the pro-note.

Rupees 2,500 is said to have been paid to one Mallikarjunudu at defendants' request.

Rupees 3,000 is said to have been paid to Sanku Ramasami Chetti.

Rupees 1,700--the amount the plaintiffs undertook to pay to one Radhakrishna's son on account of the defendants who owed that sum under a pro-note.

Rupees 1,200, another amount the plaintiffs undertook to pay another creditor.

Rupees 6,062-1-6--the amount which was due at that time to the plaintiffs by the defendants on account of prior dealings between the parties.

Rupees 20,962-1-6.

4. It is stated before us that the sum of Rs. 1,200 was not really due to the creditor and the real debt is only about Rs. 500. Wallis, J., decided that the plaintiffs had failed to prove that they paid the sum of Rs. 6,500 to the insolvents or Rs. 2,500 to Mallikarjunudu and declared the promissory-note and the mortgage to be fraudulent within Section 24 of the Insolvency Act. This is an appeal from that decision. Mallikarjunudu is a near relation of the insolvents and a partner in their cotton-press business. Their accounts show that he was indebted to them in the sum of Rs. 58. Why, then, it was necessary to pay him the sum of Rs. 2,500 has not been explained. He has not been examined as a witness by the plaintiffs. In these circumstances, we are not prepared to interfere with the finding of the learned Judge, who considers the oral evidence of payment of no weight.

5. The witnesses, who speak to the payment of Rs. 6,500, speak also to the payment to Mallikarjunudu which we have found is false, With the exception of the 1st plaintiff and Papiah plaintiff's 4th witness, they are all gumastas of the plaintiffs or the insolvents. There is evidence that on the 8th, two days before the execution of the pro-note, a creditor, defendant's 2nd witness, knowing that the insolvents were in bad circumstances, brought pressure to bear on them and obtained from them valuable jewels as security. The plaintiffs are neighbours and friends of the defendants and must have known this. It is also conceded that the defendants had to utilize for their own purposes a sum of Rs. 3,000 which they had borrowed as agents for the minor son of their relative, and the plaintiffs were informed of this before the loan. It is clear, therefore, when the defendants asked the plaintiffs for a further loan of Rs. 12,000, they must have known that the defendants were in difficulties. In these circumstances, it is not likely that the plaintiffs would have paid anything without securing more satisfactory evidence of such payment. We agree with the learned Judge, and find that the plaintiffs have failed to prove this payment also.

6. It is then urged that the mortgage should be upheld to the extent of the consideration conceded or proved. It is contended that the transfer cannot be said to be voluntary" within Section 21 of the Indian Insolvency Act as there was consideration and it must have been made under pressure. But there is no evidence of any claim or demand by the plaintiffs. The evidence shows, on the other hand, that it was the defendants who took the initiative and requested the plaintiffs for the loan. No pressure by the plaintiffs can explain the mortgage for a far larger sum than was really due. If the plaintiffs had only taken a transfer to secure the amount advanced by them and which they undertook to pay to the insolvents" creditors, a different question would have been raised on which it is

unnecessary for us to express any opinion. The whole must be treated as one transaction and on the finding that there was no consideration to the extent of Rs. 9,000, the reasonable conclusion is that the mortgage was really granted to secure the property to that extent from the clutches of the creditors. It was in consideration of the plaintiffs" preserving the property for the defendants that the plaintiffs obtained a mortgage for their own debts. The plaintiffs were really trustees for the defendants insolvents with a charge on the property to secure the debts due to them. It was, therefore, voluntary and fraudulent and void against the Official Assignee.

7. The appeal is dismissed with costs.