

(1893) 01 MAD CK 0002
In the Madras High Court

Gopal and Another

APPELLANT

Vs

Bank of Madras

RESPONDENT

Date of Decision : 24-01-1893

Acts Referred:

Citation : (1893) ILR (Mad) 397

Hon'ble Judges : Muttusami Ayyar, J; Best, J

Bench : Division Bench

Judgement

1. The suit out of which this appeal has arisen was instituted by the Bank of Madras for a declaration that an instrument, dated 12th April, 1889,

executed by first defendant to second and third defendants, transferring to the latter a decree held by the former against the Zamindar of

Karvetnagar is void, if not altogether, at least as against the plaintiff bank.

2. The plaintiff's case is that the instrument in question was executed by first defendant fraudulently and in collusion with second and third

defendants with the object of delaying and defeating the just claims of the plaintiff to whom he was indebted at the time on account of bills executed

or endorsed by him amounting to Rs. 25,000. The first defendant has not defended the suit. The second and third defendants pleaded that the

transfer in question was neither fraudulent nor collusive, but that it was taken by them in good faith and for valuable consideration.

3. The District Judge has found that the second and third defendants acted in good faith in accepting the plaint transfer and that they have paid

considerable sums to creditors on the strength of it, but that it is nevertheless void, because the instrument in question (Exhibit A) is not really a

sale-deed, but a deed of trust in favour of certain preferred creditors, including

the trustees themselves (second and third defendants) and

according to English law a trust evincing an unfair preference of creditors is bad, no matter what may have been the importunity of such creditors.

He has, therefore, decreed that Exhibit A is "fraudulent on the part of first defendant and void.

4. Hence this appeal by Defendants Nos. 2 and 3.

5. The first question is whether the Judge is right in holding Exhibit A to be merely a deed of trust and not a sale. By it first defendant makes over

absolutely to these appellants a decree under which he is stated to be entitled to a sum of Rs. 57,000 and odd for a sum of Rs. 48,000-11-2, of

which Rs. 23,945-6-0 are to be paid to certain named creditors (including second and third defendants) of first defendant (the vendor) and Rs.

24,000 to the vendor's father, the balance Rs. 55-5-2 having been paid in cash to the vendor himself. There is no good reason for holding that the

document is merely a deed of trust and not a sale-deed as it purports to be.

6. Such being the case, is it void simply by reason of its having been executed by first defendant in contemplation of his approaching failure and

insolvency? The mere fraudulent intent of the vendor cannot avoid the deed if the purchasers were free FROM that fraud. Cf. in re Johnson: Golden

v. Gillam L.R. 20 Ch. D. 389 at page 394; see also Motilal Ravichand v. Utam Jagjivandas ILR 13 Bom. 434 In the present case it is found by the

Judge that second and third defendants are not shown to have acted otherwise than in good faith in accepting the transfer of the decree, and that

they have paid considerable sums to creditors on the strength of it. This finding is well supported by the evidence. As observed by the Judge, it is

clear that the plaintiff bank was lending money to first defendant in belief of his solvency until just before he ran away to Pondicherry, and there is

nothing to show and no inference can be fairly drawn, that second and third defendants had any better knowledge OF first defendant's

contemplated act of insolvency. Nor is it shown that the appellants were even aware of first defendant's indebtedness to the plaintiff,

7. Under these circumstances the plaintiff is not entitled to a decree declaring the instrument to be void; in addition to the Bombay case above

referred to, see Sankarappa v. Kamayya 3 M.H.C.R. 231 Gnanabhai v. Srinivasa Pillai 4 M.H.C.R. 84 and Pullen Chetty v. Ramalinga Chetty 5

M.H.C.R. 368

8. The decree of the Lower Court must be set aside and plaintiff's suit dismissed with costs of second and third defendants in both Courts.

9. Barclay, Morgan and Orr, Attorneys for Respondent.