

(1893) 01 MAD CK 0007
In the Madras High Court

Gopal Row and Another

APPELLANT

Vs

The Bank of Madras

RESPONDENT

Date of Decision : 24-01-1893

Acts Referred:

Citation : (1893) 3 MLJ 197

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, 1st defendant to 2nd and 3rd defendants, transferring to the latter a decree held by the former against the Zamindar of Karvetnaggar

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 1st defendant fraudulently and in collusion with 2nd and 3rd 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 1st defendant has not defended the suit. The 2nd and 3rd 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 2nd and 3rd 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, Exh. A, is not really a sale-

deed but a deed of trust in favor of certain preferred creditors including the trustees themselves (2nd and 3rd 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 Exh. A is ""fraudulent on the part of 1st 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 Exh. A to be merely a deed of trust and not a sale. By it 1st 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 2nd and 3rd defendants) of 1st 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 its purports to be.

6. Such being the case, is it void simply by reason of it having been executed by 1st 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 p. 394. See also *Motilal Ravichand v. Utam Jagjivandas I.* L. R 13 B 434 In the present case it is found by the

judge that 2nd and 3rd 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 1st 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 2nd and 3rd defendants had any better knowledge of 1st defendant's contemplated act of

insolvency. Nor is it shown that the appellants were even aware of 1st defendant's indebtedness to the plaintiffs.

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

referred to, *Sankarappa v. Kamayya*, 3 M. H. C. R 231 at p. 235, *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 2nd and 3rd defendants in both courts.