

(1987) 08 MAD CK 0037

In the Madras High Court

Case No : Appeal Suits No's. 539, 610 and 611 of 1980

K. R. LOGANATHAN AND OTHERS

APPELLANT

Vs

UNION OF INDIA AND OTHERS

RESPONDENT

Date of Decision : 11-08-1987

Acts Referred:

Citation : (1988) 65 CTR 162 : (1988) 174 ITR 645

Hon'ble Judges : S. A. Kader, J

Bench : Division Bench

Judgement

S. A. KADER J. - These three appeals arise out of the common judgment of the Court of the Subordinate Judge, Coimbatore, in O.S. Nos. 839 of 1974, 836 of 1974 and 52 of 1975, respectively. The plaintiffs are the appellants.

The plaintiffs in these three suits, who are brothers have filed these three separate but identical suits against the defendants, who are the same in all three suits, for a declaration that the suit property, which is also the same in all the three suits, viz., an undivided one-third share in the premises bearing door No. 26/285, Big Bazaar Street, Coimbatore, is not liable for attachment or sale for recovery of arrears of Income Tax of K. R. Radhakrishnan and for a consequential injunction. The averments in these plaints are as follows :

The three plaintiffs in these three suits and K. R. Radhakrishnan are the sons of late K. Ramakrishna Pillai. The said Ramakrishna Pillai was carrying on business in jewellery at Coimbatore, in door No. 26/285 in the name and style of "K.R. & Sons". Under a family arrangement, the said K. Ramakrishna Pillai settled the entire plaint scheduled property in favour of his son, K. R. Radhakrishnan, under a registered document dated March 27, 1957, on the distinct understanding that the business of K. R. & Sons has to be carried on in this building and that in no event or circumstance should the building be alienated to any third party. In the event of sale, it shall be sold only to member or members of the family carrying on the jewellery business in the suit premises. The settlee, K. R. Radhakrishnan, left the family in furtherance of the family arrangement and started his own

business in the name of "K. R. Radha and Company" in a different building in Raja Street, Coimbatore, while the settlor, Ramakrishna Pillai, continued to occupy the scheduled building and carry on the business of K. R. & Sons on payment of rent to the settlee, K. R. Radhakrishnan. The other three sons of K. Ramakrishna Pillai, who are the plaintiffs in these three suits became partners with their father in the business of K. R. & Sons, and after the death of their father, these three plaintiffs reconstituted the partnership by means of a deed dated April 1, 1961. The scheduled building was the only one available to them for their business. Ever since the death of their father, the three plaintiffs have been requesting their brother Radhakrishnan to sell away the properties to them as it was required for their jewellery business. Accordingly, on January 22, 1969, K. R. Radhakrishnan sold to the plaintiffs in each of these suits one-third share in the scheduled building, viz., door No. 26/285, Big Bazaar Street, Coimbatore, for a consideration of Rs. 25,000 each. These sales are bona fide transactions for valuable consideration in pursuance of the family arrangement. The vendor, K. R. Radhakrishnan, assured the vendees that the only encumbrance was a mortgage debt of Rs. 20,000 due to Coimbatore Jewellery and Finance Association and there was no other encumbrance to be discharged. The aforesaid mortgage debt of Rs. 20,000 was duly quoted in the deed of sale in favour of the plaintiff in O.S. No. 52 of 1975 and was discharged. The entire building is now in the actual possession and enjoyment of the plaintiffs in these suits. While so, on July 25, 1974, a sheet of paper purporting to be an order of attachment in I.T.C.P. No. 15 bearing reference No. M. 158/1970-71/MC, etc., dated June 13, 1974, was found affixed on the front wall of the plaintiffs building purporting to prohibit K. R. Radhakrishnan from transferring or charging the said building in any way as he had failed to pay the Income Tax arrears of Rs. 15,677 and a certificate No. 9825 dated March 30, 1971, and March 30, 1972, had been forwarded to the Tax Recovery Officer for collection. To the best of the knowledge and information of the plaintiffs, there was no proceeding pending against Radhakrishnan either in respect of assessment or in respect of recovery at the time when the plaintiffs purchased these properties. The sales in favour of the plaintiffs were for valid consideration without notice of any pending proceeding against the vendor, K. R. Radhakrishnan. The order of the Income Tax authorities treating the property described in the schedule as belonging to K. R. Radhakrishnan and seeking to attach the same is one without jurisdiction, irregular, illegal and void. The provisions of section 281 of the Income Tax Act, 1961, are not attracted. Hence the suits after issuing the statutory notice u/s 80, CPC.

The defendants resisted the action. It is denied that the suit building is compulsorily required for the jewellery business of the plaintiffs or their father. If it were so, there was no necessity on the part of the plaintiffs father to settle this property in favour of K. R. Radhakrishnan on March 27, 1957. It is also not true that the suit building was the only one available to the plaintiffs to carry on the jewellery business. The plaintiffs are owners of a number of buildings in Coimbatore town. The building has been sold in January, 1969, at the time when

the Income Tax proceedings and the assessments for years 1964-1965 to 1968-1969 in the case of K. R. Radhakrishnan were at various stages of finalisation. In fact, the assessments for 1964-65 and 1965-66 were completed within a few months thereafter and in respect of these assessments, K. R. Radhakrishnan was found guilty by the Chief Magistrate under sections 193 and 196, IPC. The motive with which the property has been sold is to defraud the Revenue. The vendor of the property knowing fully well his tax liability, consequent on the various proceedings taken against him for his assessments for 1964-65 to 1968-69, has fraudulently and intentionally transferred his properties to his own brothers. It is also alleged that these deeds of sale are sham and nominal and make-believe documents. The factum of purchase of property by the plaintiffs in these suits on January 22, 1969, is not controverted. But, it is not true to say that the plaintiffs are bona fide purchasers for value without notice. It is strange to note that the sale of these attached properties is covered by three separate sale deeds executed by the vendor in favour of his brothers for Rs. 25,000 each and this type of transaction was intentionally done to obviate the necessity of getting a certificate u/s 230A of the Income Tax Act, and this would go to show the fraudulent motive of the seller. The plaintiffs in these suits and their vendor, K. R. Radhakrishnan, are brothers. They were all partners in the business of K. R. & Sons from January 1, 1964, to December 31, 1968. As such, the plaintiffs cannot convincingly plead ignorance of the pending assessment proceedings against K. R. Radhakrishnan. The plaintiffs had definite knowledge of the pending proceedings against K. R. Radhakrishnan in respect of Income Tax matters and the plaintiffs plea that the sale was for valid consideration without notice of pending proceedings cannot be accepted. During the course of the proceedings culminating in the order u/s 281, a specific opportunity was given to all the purchasers including the plaintiffs requesting them to offer their representations, if any. For this purpose, a hearing was fixed on January 13, 1974. The plaintiffs have never cared to respond to this hearing and hence, an order was passed u/s 281 which may kindly be read as forming part and parcel of this written statement. It is also alleged that the plaintiffs brother, K. R. Radhakrishnan, set up the plaintiffs to file these suits in order to delay and defeat the proceedings for recovery of arrears. The plaintiffs and their brother, K. R. Radhakrishnan, are hand-in-glove and have brought these suits in collusion.

On the above pleadings, the following issues were framed for trial :

O.S. No. 836 of 1974 :

1. Whether the sale of the Suit property on January 22, 1969, is a fraud on the Revenue and not bona fide ?
2. Whether the sale deed dated January 22, 1969, is not for valuable consideration and without notice ?
3. Whether on the date of sale, Income Tax proceedings and assessments for

1964-65 to 1968-69 in the case of K. R. Radhakrishnan were at various stages of finalisation and were completed within a few months after the completion of the sale ?

4. Whether the sale deed dated January 22, 1969, is a sham and nominal document not intended to be acted upon ?

5. Whether the sale of attached property by three separate sale deeds each for Rs. 25,000 was executed to avoid getting an Income Tax clearance certificate u/s 230A of the Income Tax Act ?

6. Whether the sale is void u/s 281 of the income tax

7. Whether the plaintiffs were the erstwhile partners along with the seller, K. R. Radhakrishnan in K. R. & Sons from January 1, 1964, to December 31, 1968, and as such cannot plead ignorance of the assessment proceedings against K. R. Radhakrishnan ?

8. Whether, u/s 281 of the Income Tax Act, an opportunity was given to the plaintiffs to make a representation on January 19, 1974 ?

9. To what relief, if any, is the plaintiff entitled ?

O.S. No. 839 of 1974 :

1. Whether the sale of the suit property on January 22, 1969, is a fraud on the Revenue and not bona fide ?

2. Whether the sale deed dated January 22, 1969, is not for valuable consideration and without notice ?

3. Whether K. R. Radhakrishnan, the vendor of the plaintiff herein, knew fully well of his liability due to proceedings against him for his assessments from 1964 to 1969 ? Whether the assessments for 1964 to 1966 were completed within a few months after the sale to the plaintiff ?

4. Whether the three sale deeds each for Rs. 25,000 by K. R. Radhakrishnan were intentionally done to obviate the necessity of getting of a certificate u/s 230A of the Income Tax Act ?

5. Whether the sale is void u/s 281 of the Income Tax Act, being the transfer of the attached property while the assessment proceedings were pending ?

6. Whether the plaintiff was an erstwhile partner along with the seller, K. R. Radhakrishnan in K. R. & Sons, and as such cannot plead ignorance of the pending proceedings of K. R. Radhakrishnan ?

7. Whether the plaintiff and the other purchasers were requested to offer their representations on January 19, 1974, u/s 281 of the Income Tax Act ?

8. To what relief, if any, is the plaintiff entitled ?

O.S. No. 52 of 1975 :

1. Whether the sale deed dated January 22, 1969, in favour of the plaintiff is a sham and nominal sale deed executed with a view to defraud the Income Tax Department and other creditors ?
2. Whether the plaintiff had notice of the proceedings pending against K. R. Radhakrishnan ?
3. To what relief is the plaintiff entitled ?

All the suits were tried together. The learned subordinate judge found all the issues against the plaintiffs and dismissed the suits with one set of costs. Aggrieved thereby, the plaintiffs have come up in appeal.

The only point that is canvassed before me and which arises for consideration is :

Whether the deeds of sale in favour of the plaintiff in these suits dated January 22, 1969, are void u/s 281 of the Income Tax Act ?

The facts of the case are these : The late K. R. Ramakrishna Pillai, father of these three plaintiffs in the three suits and K. R. Radhakrishnan, were carrying on business in jewellery under the name and style of K. R. & Sons in the suit property bearing door No. 26/285, Big Bazaar Street, Coimbatore. In 1967, K. R. Radhakrishnan left the family after executing a deed of release under exhibit A-1 dated March 27, 1957. On the same day, the late Ramakrishnan settled the plaintiff scheduled property on K. R. Radhakrishnan by a registered deed. According to the plaintiffs, there was a family arrangement by and under which it was distinctly understood that the business of K. R. & Sons should always be carried on in the scheduled building and that in no event the settlee, K. R. Radhakrishnan, should sell the property to any third party. In the event of any sale, it must be made only to the members of the family who are running the business of K. R. & Sons. It may at once be pointed out that the deed of settlement executed by Ramakrishnan in favour of K. R. Radhakrishnan has not been produced. The further case of the plaintiffs is that Ramakrishnan continued to carry on the business of K. R. & Sons in the scheduled premises and was paying a rent of Rs. 500 per month to the settlee, K. R. Radhakrishnan. After the death of Ramakrishnan, the plaintiffs in these three suits were carrying on business as a partnership firm. In 1964, Radhakrishnan joined the firm of K. R. & Sons and became a partner thereof. But, in 1968, he retired from the partnership. Thereafter, the business has been carried on by the three plaintiffs in these three suits. On January 22, 1969, K. R. Radhakrishnan sold the scheduled property to the three plaintiffs under three separate deeds of sale in respect of an undivided one-third share each for a consideration of Rs. 25,000. Exhibits A-3 to A-5 are the said deeds of sale which are challenged as void by the Income Tax Department u/s 281 of the Income Tax Act, hereinafter referred to as "the Act".

On January 7, 1969, about two weeks prior to the execution of the aforesaid

deeds of sale, the Income Tax Officer, Central Circle-I, Coimbatore, issued a notice to K. R. Radhakrishnan, the vendor, informing him that the assessments of Income Tax on him for the years 1964-65 and 1965-66 would be taken up for hearing on January 20, 1969, and the said Radhakrishnan was asked to produce all the correspondence, accounts, records and deeds. Exhibit B-34 dated January 16, 1969, is another notice issued to Radhakrishnan asking him to explain as to why the credits in his books should not be treated as fictitious and treated as concealed income. The assessment proceedings were finalised against Radhakrishnan for the years 1964-65 to 1968-69 and a sum of Rs. 10,18,642 was found to be the anticipated liability of Radhakrishnan towards the arrears of Income Tax as on January 22, 1969, when he executed the three deeds of sale under exhibits A-3 to A-5 in favour of the three plaintiffs in these three suits. Exhibit B-13 is the tabular statement showing the arrears of Income Tax. After the finalisation of the assessment, the Income Tax Department took steps for recovery of the arrears of tax when it came to know that the assessee, Radhakrishnan, has disposed of the scheduled property in Big Bazaar Street, Coimbatore, to his brothers and action was initiated and notices were issued to the vendor and the vendees. Exhibit B-1 dated December 19, 1973, is the copy of the notice issued to the vendor and exhibits B-2 to B-4 are the copies of the notices issued to the vendees. Exhibits B-5 to B-7 are the postal acknowledgements. The vendor, K. R. Radhakrishnan, sent a reply under exhibit B-14 dated December 28, 1973, while the vendees, plaintiffs herein, did not respond. D.W.1, who was the Income Tax Officer, Central Circle-I, Coimbatore, passed exhibit B-15 order dated March 18, 1974, holding that the sales in favour of the three plaintiffs were void and attachment of the suit property was ordered. The attachment was effected on July 25, 1974. Thereupon, the plaintiffs have come forward with these suits after issuing the statutory notices u/s 80, Civil Procedure Code.

Section 281 of the Act, as it stood prior to the amendment introduced by the Taxation Laws (Amendment) Act of 1975, which applies to the proceedings in question as the sales in favour of the plaintiffs herein were in 1969, runs thus :

"Transfers to defraud revenue void. - Where during the pendency of any proceeding under this Act, any assessee creates a charge on or parts with the possession by way of sale, mortgage, exchange or any other mode of transfer whatsoever, of any of his assets in favour of any other person, with the intention to defraud the revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee as a result of the completion of the said proceeding.

Provided that such charge or transfer shall not be void if made for valuable consideration and without notice of the pendency of the proceeding under this Act."

The conditions necessary for the application of section 281 are these :

"(a)(i) The transfer must be during the pendency of any assessment proceeding under this Act against the transferor, and

(ii) the transfer must be with intention to defraud the revenue".

When these two conditions are satisfied by the Department, the burden shifts to the assessee or the transferee to show :

"(b)(i) the transfer was made for valuable consideration; and

(ii) there was no notice of the pendency of the proceedings under this Act against the assessee-transferor."

Exhibit B-33 is the notice issued to the assessee-transferor, K. R. Radhakrishnan, on January 7, 1969, by the Income Tax Officer, Central Circle-I, Coimbatore, informing him that the assessment on him for the years 1964-65 and 1965-66 would be taken up for hearing on January 20, 1969, and calling upon the assessee to produce the complete correspondence and proceedings that took place before the Collector of Customs and Central Excise in connection with the proceedings taken against him for violation of the Gold Control Order and for being in possession of unauthorised gold. The assessee has also been asked to produce evidence of the resources of his wife, Smt. Anandavalli Radhakrishnan, for the purchase of some properties and for the credits standing in her name. Exhibit B-34 dated January 16, 1969 is another communication from the Income Tax Officer, Central Circle-I, Coimbatore, to the assessee, Radhakrishnan, calling upon him to show cause as to why the credits appearing in his books of account should not be treated as fictitious and as concealed income. The assessment proceedings against the assessee, Radhakrishnan, have thus started at any rate on January 7, 1969, when exhibit B-33 notice was issued and the impugned deeds of sale under exhibits A-3 to A-5 are dated January 22, 1969. It is clear, therefore, that these transfers were during the pendency of the assessment proceedings against the transferor, K. R. Radhakrishnan.

Next, to the intention of the transferor. We cannot expect direct evidence to prove the intention of a person. Even the devil knows not the mind of man. Intention has, therefore, to be gathered from the facts and circumstances of the case and the facts and the circumstances should be considered in relation to each other and weighed as a whole. On January 7, 1969, the Income Tax Officer, Central Circle-I, Coimbatore, issued exhibit B-33 notice to the assessee, K. R. Radhakrishnan, informing him that the assessment against him for the years 1964-65 and 1965-66 will be taken up for hearing on January 20, 1969, and calling upon him to produce the complete correspondence and proceedings that took place before the Collector of Customs and Central Excise in connection with the proceedings taken against the assessee for violation of the Gold Control Order and for being in possession of unauthorised gold. The assessee has also been asked to furnish the source for the purchase by his wife, Anandavalli Radhakrishnan, of some properties and for the credits in her name in his accounts. This is followed by another notice under exhibit B-34 dated January

16, 1969, inviting the assessee's objection as to why the several credits appearing in his books should not be treated as fictitious and as concealed income. The assessee, K. R. Radhakrishnan, must certainly have anticipated rough weather ahead and imposition of heavy assessment and penalty. Immediately, he has acted and on January 22, 1969, he has sold the suit property to his three brothers under exhibits A-3 to A-5 deeds of sale, all dated January 22, 1969. The proximity of these sales to the proceedings launched against him has its own significance. It is not the case of the plaintiffs that the assessee was, at that time, under any pressure to sell his property excepting the contemplated Income Tax proceedings. Secondly, this was the only immovable property which the assessee had at that time. He had three other properties, viz. :

(1) a house in T. Nagar purchased in the name of his wife, Anandavalli Radhakrishnan, under two separate sale deeds dated March 11, 1964, and August 1, 1964;

(2) a house property in the Evening Bazaar in the name of the assessee's wife; and

(3) a building site in Nungambakkam in the name of his son.

The T. Nagar house has been sold in the year 1965-66 and capital gains have been assessed thereon in the assessment year 1966-67 (vide exhibit B-10). The Evening Bazaar property has been sold in the year 1966-67 and capital gains have been assessed thereon in the assessment year 1967-68 (vide exhibit B-11). The Nungambakkam site in the name of the assessee's son has been sold in two lots on April 28, 1965, and May 17, 1965, and capital gains have been assessed thereon in the year 1968-69 (vide exhibit B-12). It is evident, therefore, that the suit property was the only immovable property available to the assessee in January, 1969, when he sold the same to the plaintiffs in these three suits. It is contended on behalf of the appellants/plaintiffs that the assessee was running a lucrative business and he was getting a large income by way of rent from the leasehold property, viz., Mysore Cafe, that he had been assessed to Income Tax on an income of Rs. 1,00,000 for the assessment year 1969-70 and he had, therefore, ample funds to meet the tax liabilities. This amount includes capital gains of Rs. 29,150 and additional income in respect of unaccounted expenses of Rs. 30,000 and the lease rent of Rs. 8,607. Whatever it may be, these are liquid assets and can be easily screened from the tax recovery, but, not so the immovable property. Hence, the sale by the assessee of his only immovable property immediately after the commencement of the assessment proceedings is a clear evidence of his intention to defraud public revenue. Thirdly, the modus operandi adopted by the assessee in selling the scheduled property cannot be ignored. The total consideration for which the property is purported to have been sold to his three brothers is Rs. 75,000. But, instead of executing a single deed of sale in favour of his three brothers for the total consideration of Rs. 75,000, the assessee has executed three deeds of sale in favour of each of his brothers in

respect of his undivided 1/3rd share for a consideration of Rs. 25,000 each. It needs no shrewdness to discern that this is a subtle attempt to avoid the procuring of a no-objection certificate from the Income Tax Department u/s 230A of the Income Tax Act, which enjoins the registering authority not to register any document purporting to transfer, assign, limit or extinguish the right, title or interest of any person to or in any property valued at more than Rs. 50,000 without a no-objection certificate from the Department. The assessee was conscious of the fact that if an application is made to the Income Tax authorities for a no-objection certificate, the Department would come to know of the proposed sale during the pendency of the assessment proceedings and step in to prevent the sale. All the above factors clearly show that the intention of the assessee, K. R. Radhakrishnan, in executing exhibits A-3 to A-5 deeds of sale over the scheduled property in favour of his brothers, the three plaintiffs in these three suits, was to defraud public revenue.

The Department has thus established the two ingredients laid down in the main section and the burden is now shifted to the plaintiffs to show that the transfer was made for valuable consideration and that they had no notice of the pendency of the proceedings under this Act against the transferor.

Exhibits A-3 to A-5 each is for a consideration of Rs. 25,000 and the total consideration for the sale of the entire property comes to Rs. 75,000. It is contended on behalf of the Department that the property will be worth more than Rs. 2,00,000 at the time of sale and the consideration mentioned in these three deeds of sale for Rs. 75,000 is grossly inadequate. According to D.W. 1, who is the Income Tax Officer, Central Circle, Madras, the Income Tax Inspector, Coimbatore, has valued the property at Rs. 1,51,700. But the report of the Income Tax Inspector has not been filed nor has the Income Tax Inspector been examined. Hence, the testimony of D.W. 1 that the property has been valued by the Departmental officials at Rs. 1,51,700 cannot be accepted. However, the fact remains that the assessee himself in his wealth-tax return for the year 1965-66 under exhibit B-33 has valued this property at Rs. 1,00,000. In 1969, when the property was sold, the value must be more than Rs. 1,00,000. Hence, the sale of the property to the plaintiffs in these three suits for Rs. 75,000 may be said to be inadequate, but not grossly inadequate. As per the proviso to section 281 of the Income Tax Act as it stood before the amendment of 1975, what is required is that the sale must be for valuable consideration and not adequate consideration as is the language of the proviso after the amendment of 1975. The consideration for exhibit A-3 deed of sale in favour of the plaintiff in O.S. No. 836 of 1974 and exhibit A-4 deed of sale in favour of the plaintiff in O.S. No. 839 of 1974 have been paid in cash. In respect of the sale, under exhibit A-5 in favour of the plaintiff in O.S. No. 52 of 1975, a sum of Rs. 5,000 has been paid in cash and the balance of Rs. 20,000 has been reserved with the vendee for discharge of the equitable mortgage in favour of the Coimbatore Jewellery and Finance Association. The cash payments are evidenced by the entries in exhibit A-2 ledger. Subsequent to the sale, the plaintiffs have made some improvements in

the property at a cost of Rs. 25,510.93 as is evident from exhibits A-8 to A-10 entries in the ledger. I have, therefore, no doubt that the consideration for these three deeds of sale has passed to the vendor and exhibits A-3 to A-5 are for valuable consideration.

The further question is whether the plaintiffs had knowledge of the pending tax proceedings against the vendor at the time of the sales in their favour. As in the case of the intention of a person, the question of knowledge has also to be gathered from the surrounding circumstances. Let me first deal with the case of the plaintiffs that the sale of the scheduled property in favour of the plaintiffs was in pursuance of a family arrangement entered into at the time when K. R. Radhakrishnan left the family in 1957 and a deed of settlement was executed by the father, Ramakrishnan, in favour of K. R. Radhakrishnan on March 27, 1957, in respect of the suit property. According to the plaintiffs, one P. A. Raju Chettiar acted as a mediator and it was understood that the said building shall always be earmarked for the carrying on of the business of K. R. & Sons, that the settlee, K. R. Radhakrishnan, should not sell the property to a third party and if he wanted to sell, he must sell it only to the members of the family who are carrying on the business of K. R. & Sons and only in pursuance of that arrangement, K. R. Radhakrishnan sold the property to the plaintiffs. The less said about this family arrangement the better. Excepting for the ipse dixit of P.W. 1, there is absolutely nothing to substantiate this so-called family arrangement. Even the deed of settlement in favour of K. R. Radhakrishnan has not been produced obviously because there is no reference in it to the family arrangement. Nor has P. A. Raju Chettiar, who is said to have mediated, been examined. The family arrangement pleaded by the plaintiffs is, therefore, a myth.

Till 1964, the three plaintiffs were carrying on the business of K. R. and Sons as partners. In 1964, K. R. Radhakrishnan, transferor-assessee, joined the partnership and he left the partnership on December 31, 1968, twenty-one days before the impugned deeds of sale under exhibits A-3 to A-5 have been executed by him in favour of his brothers, the three plaintiffs herein. It is admitted by P.W. 1 that the transferor, K. R. Radhakrishnan, was an Income Tax assessee. His income must include the income from this partnership of K. R. and Sons at least for the years 1964 to 1968. The plaintiffs must, therefore, have known whether the transferor, K. R. Radhakrishnan, has submitted returns of his income including the income from this partnership firm. The plea of ignorance set up by the plaintiffs of the assessment proceedings against the assessee-transferor is false. They were certainly knowing that the assessment proceedings against their brother have not been disposed of at the time when they purchased this property.

There is another clinching circumstance to which I have already referred. The suit property has been purchased by the three plaintiffs not under a single deed of sale for Rs. 75,000 but by the three separate deeds of sale in respect of an undivided 1/3rd share for Rs. 25,000 each. The explanation offered that they are assessed to Income Tax separately and hence they purchased the property

separately is too perilous to be accepted. The apparent motive for this purchase under different deeds of sale is only to obviate the necessity of obtaining a clearance certificate from the Income Tax Department u/s 230A of the Act and put the defendant on notice of the proposed sale. The vendor and the vendees have acted in concert and have resorted to this subterfuge with a view to keep the Department in the dark. The vendees have acted in collusion with their brother and have brought about these deeds of sale with full knowledge of the pending assessment proceedings against their brother. As pointed out by the Supreme Court in *McDowell and Co. Ltd. Vs. Commercial Tax Officer*, (headnote) :

"The proper way to construe a taxing statute, while considering a device to avoid tax, is not to ask whether the provisions should be construed literally or liberally nor whether the transaction is not unreal and not prohibited by the statute, but whether the transaction is a device to avoid tax and whether the transaction is such that the judicial process may accord its approval to it. It is neither fair nor desirable to expect the Legislature to intervene and take care of every device and scheme to avoid taxation. It is up to the court to take stock to determine the nature of the new and sophisticated legal devices to avoid tax and to expose the devices for what they really are and to refuse to give judicial benediction."

I am convinced that the execution of the three separate deeds of sale is a legal device adopted by the vendors and the vendees in collusion to escape liability for the tax.

For the foregoing reasons, I hold that exhibits A-3 to A-5 deeds of sale in favour of the plaintiffs in these three suits are void u/s 281 of the Income Tax Act, as it stood before the amendment of 1975 and has been rightly declared so by the Income Tax Department. The finding of the court below is not liable to be impugned. The point is found against the appellants.

In the result, all the three appeals fail and are dismissed with costs. Advocates fee one set.