
(1966) 01 GUJ CK 0010
In the Gujarat High Court

Kanbi Poker Teja Ladha

APPELLANT

Vs

Thakar Kheraj Bhanji and Others

RESPONDENT

Date of Decision : 21-01-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8
Transfer of Property Act, 1882 — Section 53

Citation : (1967) 8 GLR 766

Hon'ble Judges : V.B. Raju, J

Bench : Single Bench

Judgement

V.B. Raju, J.—This appeal is against the finding of the first appellate Court that a particular transfer dated 8th October, 1953 by defendants Nos. 1 and 2 in favour of defendant No. 3 was fraudulent on the creditors.

2. It is contended that the view taken by the lower appellate Court that the transfer is void u/s 40 of the B. A.D.R. Act is wrong. This view is no doubt incorrect because it only makes void the transfers by a debtor and not by a person who is alleged to be a debtor and the finding clearly is that he is not a debtor.

3. It is next contended that the suit should be filed on behalf of the creditors. This contention is not correct in view of Section 53 of the T. P. Act. But the plaint, particularly para 4 thereof, and the prayer clause do show that the suit was filed on behalf of all the creditors. It appears that no permission of the Court was taken for filing such a suit as required by Order 1, Rule 8, CPC and no notice was given as stated in that Rule. But such a permission to file a suit is always given by the Court. The failure to take the permission of the Court is a trifling mistake, which does not affect the merits of the matter.

4. It is next contended that the finding of the lower appellate Court that the transfer is fraud on creditors is bad because the finding is based on irrelevant considerations. The learned Judge has given various reasons. We cannot say that the reasons given are irrelevant. Most of the reasons may be good, but it is

immaterial whether reasons are good or not because it is a finding of fact. The findings that there was no consideration and that the whole transfer is bogus are pure questions of fact and cannot be interfered with by me in second appeal, although I may or may not agree with the reasons for holding that the transfer was a fraud on creditors. In some cases, the finding that a transfer is a fraud on the creditors may be a mixed question of fact and law. But this is not so in this case. This finding cannot therefore be interfered with by me in second appeal.

5. The Learned Counsel for the appellant relies on the case of Narendra Manubhai Ghael and Another Vs. Bhikhabhai Bhukhandas Modi and Others, , and contends that because a representative suit was not filed, the suit itself becomes untenable. The facts of that case were different. In that case there was no mention of the fact that the suit was a representative suit in any part of the plaint. The prayer clause clearly shows that the prayer for a declaration was to be obtained by the plaintiff alone. That is not the case in the present appeal. The plaint in the present case clearly shows that the suit was of a representative character on behalf of all the creditors. Therefore that decision can be easily distinguished.

6. The appeal is, therefore, dismissed. No orders as to costs.