
(1931) 08 MAD CK 0010
In the Madras High Court

Peruri Appalaraju

APPELLANT

Vs

Peruri Krishnamurthy and Others

RESPONDENT

Date of Decision : 19-08-1931

Acts Referred:

Citation : AIR 1932 Mad 182 : (1931) 34 LW 949

Judgement

1. The plaintiff is the appellant before us. The facts out of which this appeal arises may be stated as follows: Defendant 1 is the natural son of the plaintiff, but adopted by his cousin. Defendant 1 obtained a decree on an unregistered mortgage bond which therefore operated as a mere money bond for a sum of Rs. 1,600 which now amounts to Rs. 3,000 in O. S. No. 141 of 1923. He applied for attachment of certain properties of defendants 2, 3 and 4 situated at Thetagunta. The attachment was ordered on 21st September 1927. But on 20th September, the preceding day, the properties whose attachment was sought were sold by Ex. A to the plaintiff for Rs. 9,000, The consideration for the sale deed consisted of (1) a sum of Rs. 4,931-1-9 due to the vendee on two mortgage documents dated 13th March 1922 and 8th December 1923, Exs. D and E-1; (2) Rs. 103-3-4 due on a promissory note to the vendee; (3) Rs. 3,800 intended for discharging (a) the debt due to the Rani of Tuni under a mortgage dated 5th March 1913, Ex. G, and (b) the debt due to China Talrazu and others under a mortgage deed dated 8th December 1923, and also (c) a decree debt due to one Malrazu Ramaswami who has also obtained attachments of some property in execution of the decree; lastly (4) Rs. 165-10-11 paid before the Registrar. There is no dispute about the genuineness of items 1 and 2.

2. As to item 3, the vendee as a matter of fact paid Rs. 4,387-4-0, that is, much more than Rs. 3,800 mentioned in the document. When the

attachment sought by defendant 1 was effected a claim petition was filed by the vendee relying on the sale deed. This claim was inquired into by

the District Munsif of Cocanada and it was dismissed: vide order, Ex. J. He held that the sale deed, Ex. A, was executed with the secret

reservation of some interest in the lands to the judgment-debtors and therefore it is not prima facie a bona fide transaction. Hence this regular suit

by the plaintiff. The Subordinate Judge of Cocanada who tried the suit dismissed the suit. The plaintiff files this appeal.

3. It may be observed that the real crux of the case lies in the question whether the sale deed, Ex. A, was for adequate consideration. Defendant 1

alleges that the property is worth Rs. 12,000, and there was actually an offer for that amount. But finally it was arranged between the plaintiff and

the vendors to have a sale deed for Rs. 9,000 only, there being some kind of secret arrangement in favour of the debtors so that they may get the

benefit of the difference between the full value and the value mentioned in the sale deed. The evidence on this matter consists of two transactions.

One is an attempt to purchase by a retired Tahsildar, P. W. 2, Pandayala Gurumurthi. He says he was willing to purchase three-fourths of the lands

for Rs. 7,500. His agent Atti China Venkatachalam gives evidence as D.W. 2. He says he settled the sale for Rs. 8,000. The discrepancy is only

apparent because even P. W. 2 admits that D. W. 2 wrote to him recommending that the lands may be taken for Rs. 8,000. But the transaction fell

through. P. W. 2 says that the whole extent of the land is 20 acres wet and 22 acres dry. This portion of his evidence seems to be inaccurate,

because we have got evidence in connexion with the second transaction, now to be referred to, that the extent of lands is 120 acres. The other

transaction which is relied on in this case is that one Dantuluri Venkatanarasimharazu, D. W. 3, arranged for a purchase of these lands for Rs.

12,000. A stamped agreement was actually drafted, which is Ex. 1 in the case, but was not executed by the mother of defendants 2 and 3. This

document shows that the lands in Thetagunta are 120 acres in extent. It is suggested that this Ex. 1 is really a fabrication to support defendant 1's

case. We are unable to accept this suggestion. D. W. 3 is a Kshatriya gentleman getting an annual income of Rs. 4,000 from his lands and he is a

Taluk Board member. He was private secretary to the Rani of Tuni, though it is just possible that he is not occupying that position because the Rani

has adopted a son. We do not see any reason why this gentleman should lend himself to a fabrication of the document for helping this dispute

between the plaintiff and defendant 1 who are Vysias in connexion with the debts due from defendants 2 and 3 who are Kapus. No prior enmity or

partiality has been elicited in cross-examination of this witness, and we find it difficult to brush aside the transaction proved by this gentleman.

Apart from this there are other suspicious circumstances in the case. Whereas Ex. 1 mentions all the debts of defendants 2 and 3, only defendant

1's debt is omitted from Ex. A, and arrangements are made for the payment of all other debts. It is true there is another debt due to one Soma

Razu, but that has been realized by sale of the house of defendants 2 and 3. There was also another mortgage debt due to defendant 1, but that

has been realized by the sale of Kathipudi lands. While defendants 2 and 3 have no other property, only defendant 1's debt has been left

unprovided for at the time of the execution of Ex-A. The decree obtained by defendant 1 was itself the subject-matter of second appeal and

Letters Patent Appeal, and we disposed of the Letters Patent Appeal yesterday. It is practically proved from the records in the case and from the

evidence that the plaintiff was financing that appeal, and though it may be said that the plaintiff has an interest in getting rid of the debt of defendant

1 for the protection of his sale deed, still the fact that he was incurring expenses in addition to the consideration mentioned in the sale deed is

significant.

4. The mother of defendants 2 and 3 gives evidence in the case as P.W. 4 She says she did not attend Court on prior occasions. She was brought

to Court by the plaintiff on the occasions when she gave evidence and it is even suggested to her that the plaintiff was providing for her

maintenance. Taking these circumstances into consideration and having regard to the evidence of D.W. 3, we must hold that it was proved that at

the time of the sale deed the lands were considered to be worth Rs. 12,000 and that the sale for Rs. 9,000 was really made with the view of

defrauding and defeating the debt of defendant 1 by screening the property under the guise of a sale deed for inadequate consideration. In all such

cases the only evidence that can be available the various suspicious circumstances from which an inference can be drawn that the sale was made

with a view to defraud defendant 1. It is true that a bare suspicion will not do, but we think more than that is available in this case. We therefore

agree with the finding of the Subordinate Judge.

5. The next question is whether the sale is wholly void. Apart from the fact that part of the consideration consists of four mortgage deeds we think

there is no other circumstance that can be invoked in favour of the plaintiff. It is true in *Musaharsahu v. Hakim Lal* A.I.R.1915 P.C.115 and *Mina*

Kumari Bibi v. Bijoy Singh Dudhuria AIR 1916 P.C. 238 the Privy Council held that a sale in favour of a creditor, by which he was preferred and

another creditor lost his money, is valid. But that is a case where there is no inadequacy of consideration. The whole amount of the consideration

was in discharge of a debt due to the vendee creditor. In such cases it is often observed that a debtor may prefer one creditor to another. But that

principle does not apply to a case where the whole of the consideration of the transaction was not the debt of the preferred creditor. Where only a

part of the consideration is a debt due to the creditor, but the rest of it is fictitious or there is inadequacy, then the whole transaction is void. This is

the decision in *Chidambaram Chettiar v. Sami Aiyar* [1907] 30 Mad. 6, affirmed by the Privy Council in *Chidambaram Chettiar v. Srinivasa*

Sastrigal A.I.R.1914 P.C.137.

6. Mr. Raghava Rao, the learned advocate for the appellant, has invited our attention to three cases. One is the judgment of our brothers

Venkatasubba Rao and Phillips, JJ., in Loorthia Odayar v. Copalasami A.I.R.1924 Mad.450. In that case the transaction attacked was a

mortgage. The mortgage was partly for paying prior creditors to the extent of Rs. 7,000 and partly for Rs. 3,000 which has been found to be

fictitious. The learned Judge Venkatasubba Rao, relying on the decisions in *Musaharsahu v. Hakim Lal* A.I.R.1915 P.C.115 and *Mina Kumari v.*

Bijoy Singh A.I.R.1916 P.C.238, upholds the transaction to the extent of Rs. 7,000. He distinguishes the decision in *Chidambaram Chettiar v.*

Sami Aiyar [1907]30 Mad.6 by saying it is not a case dealing with immovable property, but even where the alienation is not of immovable

property the principles applicable are the same as Section 53 by analogy. We are

not satisfied with the reasons given by the learned Judge for distinguishing *Chidambaram Chettiar v. Sami Aiyar* [1907]30 Mad.6. The two decisions of their Lordships of the Privy Council in *Musaharsahu v. Hakim Lal* A.I.R.1915 P.C.115 and *Mina Kumari v. Bijoy Singh* A.I.R.1916 P.C.238, are cases where there is no inadequacy of a consideration and do not, in our opinion, support the conclusion of the learned Judge. On the other hand a number of cases of this Court seem to take the view in *Chidambaram Chettiar v. Sami Aiyar* [1907]30 Mad.6; for example, *Sama Row v. Doraiswami Chettiar* [1913]18 I.C.768, *Punyam Visvananda Reddi Vs. Gali Raja Venkata Reddi and Others*, , *V.V. Rajabhadar Mudaliar Vs. Thiruvengada Mudaliar and Others*, and *Ponnuswami Pillai v. Quadir Moihideen Rowther* [1930] M.W.N.1145. In the last of these cases it is observed by our brothers Kumaraswami and Reilly, JJ., that the trend of the authority is in favour of holding the whole transaction void. If the consideration is adequate, but if it is attacked only on the ground that a creditor is preferred, then the whole transaction is valid. This is all the effect of the Privy Council decisions. The other cases are *China Pitchiah, In re* [1913] 36 Mad. 29 and *Krishna Kumar Nandy v. Joy Krishna Nandy* [1915] 29 I.C. 690, Both these cases are cases of mortgage but the first of these is easily distinguishable. In that case the mortgage was executed partly for a debt primarily owing to the mortgagee and to that extent was held valid on the ground that Section 53 does not apply to a case where a creditor is preferred.

7. This distinction does not apply to the decision in *Loorthia v. Gopalaswami* A.I.R. 1924 Mad.450. In the other case it was found that there was no other creditor to be defrauded. The decision rests also on other grounds and need not be discussed any further. We therefore think that *prima facie* the transaction is void. But there is the fact that the plaintiff had paid off four prior mortgages. Two of the mortgages are in favour of himself. If the sale is not valid the mortgages will stand. Even in the case of other mortgage debts there is no reason to think that he intended to extinguish them. The presumption of Section 100 that he intended to keep them alive holds. The result is that he holds the position of a mortgagee under those four documents and defendant 1 will be entitled to sell the property subject to the right of the plaintiff on those four mortgages. In estimating

the value of these mortgages it must be remembered that he was in possession of the lands and was enjoying the mesne profits. Perhaps it may be proper to set off the mesne profits towards interest. Subject to the claim as such mortgagees, so understood, defendant 1 will be at liberty to sell the suit lands. Instead of dismissing the suit we will substitute a declaration to that effect. But as the plaintiff has substantially failed the appeal is dismissed with costs. If in the execution of the sale by defendant 1 more amount is realized than is necessary to discharge his debt, the surplus will go to the plaintiff; for we have no intention of questioning the sale deed except in so far as it delays or defeats defendant 1.