

(1920) 12 PAT CK 0009
In the Patna High Court

Sri Thakurji and Others

APPELLANT

Vs

Narsingh Narain Singh and Others

RESPONDENT

Date of Decision : 08-12-1920

Acts Referred:

Transfer of Property Act, 1882 — Section 53, 63

Citation : AIR 1921 Patna 53 : 63 Ind. Cas. 788

Hon'ble Judges : Das, J;Adami, J

Bench : Division Bench

Judgement

Das, J.—The plaintiffs instituted a suit on the foot of a mortgage exacted by, defendant No. 2 in their favour, got a decree, and purchased the properties in dispute at a sale held in execution of the decree. Meanwhile the defendant No. 2. had conveyed the properties to himself a trustee on behalf of certain idols. The suit, oat of which this appeal arises, was thereupon instituted by the respondents, who are the purchasers of the properties, against the appellants for the following reliefs:

(i) That it may be adjudicated that the wastfnamah, dated the, 16th January 1912, executed by defendant No. 2 in favour of Sri Thakurji and Thakur Rameshwar Nathji is altogether fraudulent and ostensible, that defendant No. 2 has executed the same with the object of misappropriating the money due to the creditors;

(ii) that defendant No. 1 has no interest in the disputed property and that according to the terms mentioned in this plaint, whatever interest defendant No. 3 had in it has passed on to the plaintiffs by virtue of the purchase made by them at the Civil Court;

(iii) that under the aforesaid purchase made on 2nd September 1913 and by virtue of the said delivery of possession made on the 15th and 16th January 1914, in execution of a decree of this Court, the plaintiffs are entitled to recover and maintain possession of the disputed property;

(iv) that on the adjudication of the above mentioned facts, and on the declaration of the plaintiff's title, and nonexistence of the defendants' title, possession may be given to the plaintiffs by evicting defendants Nos. 1 and 2 from the disputed property;

(v) that future mesine profits till the date of realization and possession may, on ascertainment and on receiving Court fee, be awarded to the plaintiffs;

(vi) that costs of this suit with future interest may be awarded against defendants Nos. 1 and 2; and

(vii) that such other reliefs as the plaintiffs be entitled to in the opinion of the Court may be granted to them.

2. The Courts below have concurrently come to the conclusion that the transfer In favour of the idols was a fraudulent transfer made with intent to defraud the plaintiffs as well as other creditors of defendant No. 2, and have given the plaintiffs a decree substantially in terms of the reliefs claimed by them.

3. In this Court a half hearted attempt was made to show that there is no clear finding of the Courts below to the effect that the assets of defendant No. 2 were not sufficient for the payment of the debts. I think that there is, and that is the end of that argument.

4. The substantial question, however, is whether the plaintiffs' suit is at all maintainable, in view of the fact that it has admittedly not been brought on behalf of all the creditors, I have no doubt whatever that if the plaintiffs suit be regarded as one under section 53 of the Transfer of Property Act to obtain a declaration that the conveyance in question is voidable at the instance of the creditors of the transferor, the suit has not been properly framed and is not maintainable. It is not difficult to understand the principle on which this equitable rule is based. As was said by Mr. Justice Mookerjee in the case of *Hakim Lal v. Mooshahar Sahu* 34 C. 999 : C.W.N. 889 : 6 C.L.J. 410, "To allow one creditor to impeach the validity of a conveyance would expose the transferee to separate attacks by different creditors, each of whom might litigate the same question in a different suit and it is not inconceivable that the Court might arrive at different conclusions in different suits brought at the instance of different creditors.

5. The Question for our determination, therefore, is, was this suit instituted u/s 53 of the Transfer of Property Act to obtain a declaration that the conveyance was voidable at the instance of the creditors of the transferor? In my view, the suit cannot be regarded as a suit u/s 53 at all, It must be remembered that the suit was a suit to obtain possession of the property. It is true that that the plaintiffs asked for a declaration that the conveyance in favour of the idols was a fraudulent conveyance, but it was necessary to ask for that declaration inasmuch as the conveyance threw a cloud on the plaintiffs' title. But the primary object of the action was nevertheless to obtain possession of the property itself. It seems to me that the primary object of an action u/s 53 of the Transfer of Property Act

is to make the assets of the transferor available to the general body of creditors; but that is clearly not the object here, A proper test to apply when a question of this nature is raised is to see whether, if the plaintiff succeeds in the action, the property claimed in the action would be available to the general body of creditor. If it would, then the action would in substance be an action u/s 53 of the Transfer of Property Act and would have to be instituted by, or on behalf of, all the creditors. If it would not then I do not see how the action can, by any possibility, ha regarded as an action u/s 53 of the Transfer of Property Act.

6. Let us apply the test here. It is obvious that the properly claimed in the action would not, by any possibility, be available to the general body of creditors, The plaintiffs have purchased the property at ft sale held in execution of their decree; they have perfected their title to the property in suit. The only obstacle to their title is not the debt due by the defendant No. 2 to the other creditors, but the conveyance executed by defendant No. 2 in favour of the idols in question. Therefore, the plaintiffs would be entitled to recover possession of the properties in suit. That property cannot, by any possibility, go to the general body of creditors. In my was, therefore, the suit could not be instituted by, or on behalf of, the general body of creditors. In my opinion the question has been decided correctly by the lower Appellate Court and I would dismiss this appeal with costs.

Adami, J.,

7. I agree.