
(1927) 07 BOM CK 0026
In the Bombay High Court

V.E.A.R.M. Firm

APPELLANT

Vs

Maung Ba Kyin

RESPONDENT

Date of Decision : 01-07-1927

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 63

Citation : (1927) 29 BOMLR 1481

Hon'ble Judges : Viscount Dunedin, J;Sinha, J;Shaw, J;John Wallis, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Viscount Dunedin, J.—In September, 1920, one Po Hla, who was proprietor of certain real property, executed a mortgage of that property in favour of Upe for Rs. 10,000. At the same time, he also executed a promissory note in favour of Upe for Rs. 5,000, and what has been said in the judgments below may be anticipated by saying that it has been found that these transactions were quite genuine transactions and represented a mortgage and a promissory note executed for a real debt. Now time went on and inasmuch as interest had not been paid, when it comes to the critical date with which we shall have presently to do, the state of affairs was this, that these Rs. 10,000 and Rs. 5,000 respectively had with interest grown into a sum of Rs. 17,000, of which, of course, only part was under the mortgage and the other was merely an ordinary debt.

2. Now in 1922, Po Hla executed a deed of: sale to Maung Ba Kyin and Ma Sein. Ba Kyin was the son of Upe, his creditor, and Ma Sein Ma Sein was the wife of Ba Kyin-(K.J.R.) was his own daughter. It is quite evident that the idea of this transaction was that Upe, in respect that it was his own son, was willing that his debt of Rs. 17,000 should be taken as part consideration of the price to be paid. The price agreed upon was Rs. 20,000, and it seems quite clear on the transaction that the Rs. 17,000 was quite rightly taken as consideration, leaving, of course, the Rs. 3,000 to be paid in cash.

3. Now in the meantime, in 1921, Po Hla had executed a promissory note for Rs. 12,000 in favour of the Chetty firm, who are the appellants in this action and the proceedings in the matter began by this Chetty firm suing upon the promissory note and then proceeding to put an attachment on what may be called Po Hla's old property. These two, the husband and the wife, who were the ostensible owners of the property, being owners in respect of a duly executed and registered deed of transfer, put in a claim under Order XXI, Rule 58, to have the attachment removed, and having failed, instituted the present suit under Order XXI, Rule 63, to establish their right.

4. Now they being the ostensible owners of the property under a duly registered deed and a deed of transfer, obviously the party claiming to attach that property for somebody else's debt, not their debt, but the debt of the original debtor, must show that the sale was a fraudulent one, and that could only be done in this case (there is no other evidence) by showing utter inadequacy of consideration. So far as the Rs. 17,000 was concerned, there was adequacy of consideration. Therefore, there only remains the Rs. 3,000. No doubt the evidence is in a very ragged condition as to precisely where and when that money was paid and, if it was necessary to show it was paid in hard cash, probably such proof would fail. But their Lordships take this view, that supposing that it was not established, inasmuch as it has been held by the judges below that the total value of the property was only Rs. 20,000, this Rs. 17,000 being an absolutely good consideration, the remaining 3,000 is not enough to allow them to draw the conclusion that it was a fraudulent sale.

5. Their Lordships will, therefore, humbly advise His Majesty to dismiss the appeal. The appeal has been heard ex parte, so there will be no order as to costs.