

(1927) 05 MAD CK 0037
In the Madras High Court

V.V. Rajabhadar Mudaliar

APPELLANT

Vs

Thiruvengada Mudaliar and Others

RESPONDENT

Date of Decision : 05-05-1927

Acts Referred:

Citation : AIR 1928 Mad 20

Judgement

1. The only point in the second appeal is whether defendant 1 is entitled to a charge in respect of the amount of consideration for Ex. 4 which was found to have passed. Ex. 4 was executed for a nominal consideration of Rs. 2,660 and the consideration found to have passed was only Rs. 1,044-15-0. More than Rs. 1,000 was not paid by defendant 1 towards the discharge of certain debts due from his mortgagor. The District Judge has definitely found that Ex. 4 was executed without consideration in part and presumably with intent to defeat or delay the creditors of defendants 2 and 3, viz., the plaintiffs. But he allows a charge in favour of defendant 1 in respect of the consideration which he finds to have been paid. When the finding clearly is that the document was executed with intent to defeat or delay the creditors, it cannot be said that the District Judge found the in tent only on the part of the alienors and not on the part of the alienee. Mr. Viswanatha Iyer strongly urges that, so far as his client was concerned there is no finding that he was a party to the conspiracy to cheat the creditors of the mortgagor. But the finding is in general terms and when it is found that a good portion of the consideration for the document was not paid by defendant 1, he cannot be said in any sense to be a bona fide alienee for full consideration. When a person buys property or gets a mortgage of property for a consideration which is far short of that mentioned in...the document, it cannot be said that he is a bona fide alienee or mortgagee. No doubt where there are no creditors to be defeated or delayed, the mortgagor or alienor could insist upon payment of the unpaid portion of the consideration. Where the question is whether the alienation was for the purpose of defeating or delaying the creditors, if it is proved satisfactorily that only a portion of the] consideration recited in the document did really pass, it is open to the Court to come to the conclusion that

the transaction was intended to defeat or delay creditors. The finding being clear on this point, it is not open to defendant 1 to contend that he is a bona fide lender to the extent of the consideration found to have passed. In such a case the proper order of the Court should be to set aside the transaction as a whole, because the transaction which is intended to defeat or delay creditors cannot be good in part and bad in part. We may in this connexion refer to *Punyam Visvananda Reddi Vs. Gali Raja Venkata Reddi and Others*, , to which one of us was a party.

2. The second appeal is allowed and the plaintiff's suit is decreed with costs throughout.