

[3 Mad. 35.]

APPELLATE CIVIL.

The 22nd April, 1881.

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE
MUTTUSAMI AYYAR.

Bheri Dorayya and another.....(Plaintiffs) Appellants

versus

Maddipatu Ramayya and others.....(Defendants) Respondents.*

Promise to pay out of debtor's property indefinitely—Decree against assets of deceased debtor indefinitely—Effect of.

A promise to pay out of the debtor's property indefinitely, and an indefinite order for the satisfaction of a decree out of the assets of a deceased person in whose hands soever they may be found, create no charge on specific property such as will bind it in the hands of a purchaser unless he purchases it in fraud.

IN this case the plaintiffs having purchased the ancient zamindari of Vundesvarapuram from defendants 3—6 on April 1, 1879, sued to set aside a summary order of the District Munsif of Rajamundri, dated January 9, 1880, refusing to release the village of Vundesvarapuram from attachments issued at the instance of defendants 1 and 2 on November 24 and December 25, 1879, in satisfaction of decrees in Suits 123 of 1870 and 187 of 1878 in the District Munsif's Court of Rajamundri.

[36] The defendants 1 and 2 contended that the sale to plaintiffs was fraudulently effected with a view to evade payment of the amount of the decrees held by them and without consideration.

The District Judge found that the plaintiffs had paid full value for the zamindari, but that the decrees in both suits made the property of defendants 3—6 liable, and that the plaintiffs had not exercised reasonable care in inquiring about circumstances at the date of their purchase.

Suit 123 of 1870 was upon a money bond and the decree simply stated that the amount claimed (Rs. 263-7-0) with subsequent interest and costs ought to be paid out of the property of the present defendants 3—6.

Suit 187 of 1878 was also upon a money bond for Rs. 1,000 executed by the present 3rd defendant (1st defendant therein) and his uncle Krishna Rau deceased on July 30, 1870, joint Zamindars of Vundesvarapuram. The obligors promised to pay the amount by yearly instalments, and after the 3rd instalment to pay the whole residue in one sum. The bond then proceeded as follows :—
“ If it is not so paid we will pay it with the whole of our property.”

The decree ran as follows :—

“ I decree that 1st defendant do pay to plaintiffs Rs. 2,383 with costs of suit on their producing certificate of heirship. I also decree that the property of Ananta Venkata Krishna Rau Pantulu Garu in whosoever possession it may be will be held answerable for the amount of decree.”

The suit was dismissed with costs.

* Appeal No. 3 of 1881 against the decree of B. Horsbrugh, Acting District Judge of Godavari, dated 17th November 1880.

The plaintiffs appealed to the High Court on the ground, amongst others, that there was no prayer in Suits 123 of 1870 and 187 of 1878, which were simply suits to recover money lent, to make any immoveable property of defendants liable.

S. Gopalachari for the Appellants.

Mr. Johnstone for the Respondents.

The Court (TURNER, C.J., and MUTTUSAMI AYYAR, J.) delivered the following

Judgment:—Neither the bond dated July 30, 1870, nor the decree which was founded upon it created a charge on the property in the hands of the vendors; for neither a promise to pay out of the debtor's property indefinitely, nor an indefinite order [37] for the satisfaction of a decree out of the assets of a deceased person in whose hands soever they may be found, create any such charge on specific property as will bind it in the hands of a purchaser, unless he purchases it in fraud (I. L. R., 1 All. 275). The only point then to be considered in appeal is whether the sale was *bonâ fide*. The Judge has found it was so, and there is abundant evidence to show that the largest part of the purchase money was employed in discharging debts, including, among others, debts due to the respondents.

The circumstance that a small portion of the whole of the purchase money was not immediately paid is not necessarily a badge of fraud. Had the purchasers been required to pay at once, they might necessarily have been compelled to decline the purchase except at a less price than they were able to offer if a little time was given.

We allow the appeal with costs in both Courts, and, reversing the decree of the Judge, decree that it be declared the plaintiffs are entitled to the village in suit, and that it is not liable to attachment and sale in execution of the decree obtained by the first and second defendants in Original Suit No. 123 of 1870 and Original Suit No. 187 of 1878.

[3 Mad. 37.]

APPELLATE CIVIL—FULL BENCH.

The 29th April, 1881.

PRESENT:

SIR CHALES A. TURNER, KT., CHIEF JUSTICE, MR. JUSTICE
INNES AND MR. JUSTICE KERNAN.

Srinivasa Sastri.....(2nd Defendant) Appellant
versus
Seshayyengar.....(Plaintiff) Respondent.*

*Registration of Certificate of Sale—of Memorandum of Certificate of Sale—
Act VIII, 1859, Section 259, Act XX of 1866, Section 42.*

Under Act VIII of 1859, Section 259, and Act XX of 1866, Section 17 and Section 42, it was necessary to register the certificate of sale itself, and not merely the memorandum of the certificate of sale.

* Second Appeal No. 577 of 1878 against the decree of A. C. Burnell, District Judge of South Tanjore, confirming the decree of the Subordinate Judge of Tanjore, dated 23rd August 1878.