contention which must be raised, and it clearly is not admissible, because a transaction *ab initio* void cannot be validated.

I have already given reasons for holding that the plaint as presented was of no legal force or effect whatever. I agree with the decision in *Jainti Prasad* v. *Bachu Singh*(1). I reverse the decree of the District Judge and restore that of the District Munsif with costs.

DAVIES, J.—I entirely concur.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Benson.

RANGAMMAL (PLAINTIFF), APPELLANT,

v.

VENKATACHARI (DEFENDANT), RESPONDENT.*

1896. March 16.

Fraudulent conveyance—Collusive decree—Fraud on creditors—Fraudulent purpose carried out—Suit by legal representative of the fraudulent transferor and judgment-debtor to set aside conveyance and restrain execution of decree—Widow of Hindu transferor.

A with the intention of defeating and defrauding his creditors made and delivered a promissory note to B without consideration and collusively allowed a decree to be obtained against him on the promissory note, and conveyed to B a house in part satisfaction of the decree: and it appeared that certain of A's creditors were consequently induced to remit parts of their claim. A having died, his widow and legal representative under Hindu Law, now sued B to have the promissory note and the conveyance set aside and to have the defendant restrained by injunction from executing the decree:

Held, (1) that the plaintiff was not entitled to relief, for A if now alive could not have claimed to have his own fraudulent acts set aside and the plaintiff was in no better position than he would have been.

Quære: Whether a widow might successfully maintain a claim for maintenance out of property alienated by her husband without consideration and fraudulently if she herself was no party to the fraud.

THIS was an appeal from the decision of Subramania Ayyar, J., reported as *Rangammal* v. *Venkatachari*(2). The facts and pleadings are fully set out in the judgment of the Court below, but for the purposes of this report may be here recapitulated.

---

(1) I.L.R., 15 All., 65.

(2) I.L.R., 18 Mad., 378.

* Original Side Appeal No. 51 of 1895.

RANGAMMAL v. VENKATACHARI.

The plaintiff who was the widow and legal representative of one Virasami Ayyangar, deceased, sued to set aside (i) the mortgage of certain lands, dated the 3rd June 1891, executed by Virasami to the defendant, (ii) the decree in Civil Suit No. 319 of 1891, obtained by the defendant against Virasami in 1892, on a promissory note, also dated the 3rd June 1891, and (iii) the deed of sale of a house, dated 14th March 1893, executed by the latter to the former and for an injunction restraining him from enforcing the said mortgage and the sale, and from executing the decree.

The late Virasami Ayyangar was a trader, and at the time of the mortgage and of the promissory note mentioned above, was heavily indebted. The plaintiff alleged that Virasami in collusion with the defendant, for the purpose of defrauding his creditors executed the mortgage and the promissory note without receiving consideration for either of them and allowed the defendant to bring suit No. 319 of 1891, referred to above on the latter document and obtain a decree therein and executed the sale deed of the 14th March 1893 in part satisfaction of the amount alleged to be due under the said decree. The mortgage was found by the learned Judge in the Court below not to have been executed fraudulently without consideration. Upon this ground the plaintiff's suit with regard to the mortgage failed. The facts connected with the promissory note and the decree obtained thereon, as found by the learned Judge in the Court below were as follows: The promissory note was executed on the 3rd June, but no consideration for it passed then or at any other time. At about the time of the promissory note Virasami was indebted to one Virayya in the sum of Rs. 9,000, but, on the former representing his inability to pay a larger sum than Rs. 5,000, the latter accepted that sum in full discharge of his claim.

On the 18th November 1891, Messrs. King & Co., creditors of Virasami, filed a suit against him to recover the amount due to them. In the same month the defendant filed a suit to recover the amount alleged to be due on the promissory note of the 3rd June 1891. In February 1892 Messrs. King & Co. obtained a decree. On the 22nd February 1893, a notice was served on Virasami to show cause why the decree should not be executed. In the meantime the defendant had obtained a decree in the suit brought by him, and on the 14th March 1893, Virasami, in part satisfaction of the decree, executed in his favour the sale-deed which the plaintiff now sued to set-aside. In August 1893, on Virasami

representing to Messrs. King & Co. that he was unable to pay their debt in full, they accepted part of the sum due under the decree in full satisfaction thereof. On these facts the learned Judge held that the promissory note of 3rd June 1891 was executed to defeat Virasami's creditors, that the decree in the suit on the promissory note was collusively obtained and that the sale-deed was fraudulent.

The learned Judge, following *Venkatramanna* v. *Viramma*(1) and *Chenvirappa* v. *Puttappa*(2), held that the decree having been collusively obtained, Virasami could not have set it aside and that therefore the plaintiff could not set it aside. With regard to the sale-deed, the learned Judge held that the sale could not be set aside inasmuch as Virasami had gained his fraudulent object in executing the promissory note of the 3rd June 1891 in suffering a decree to pass against him and in executing the sale deed in that he had induced Virayya and Messrs. King & Co. to accept less than the sums due to them.

The plaintiff appealed.

Sundaram Sastri and *Kumarasami Sastri* for appellant.

The Advocate-General (Hon'ble Mr. *Spring Branson*) for respondent.

JUDGMENT.—We have no doubt but that the finding of the Court below on both the issues raised before it is correct, and that the legal inferences drawn therefrom are also correct. It is urged in appeal that the appellant was materially prejudiced by the absence of an issue as to whether or not the fraud of the appellant's late husband was accomplished in a substantial manner. We cannot admit this plea. It was the appellant's case that her late husband's acts were without consideration and were done with a view to defraud creditors. The evidence of the appellants' own first, third and fifth witnesses shows that he was successful, and induced his creditors thereby to give up their claims to large sums of money. It seems to us to be clear that the deceased could not, if now alive, come into Court and claim to have his own fraudulent acts set aside. But it is argued that the appellant, as his widow, is in a better position, and may claim relief against the consequences of her late husband's fraudulent transfers. We are unable to admit that, in the present case the widow is in a better position than her husband

(1) I.L.R., 10 Mad., 17. (2) I.L.R., 11 Bom., 708.

RANGAMMAL v. VENKATACHARI.

would be, if alive. It is argued that the widow has a right to maintenance out of her husband's property, and has, therefore, an interest therein which *ipso facto* gives her a right to impeach its alienation, independently of the interest which she takes as widow and representative of the late owner. The case of *Ramanadan* v. *Rangammal*(1) is relied on in support of this contention. In regard to this plea, we think it enough to observe that there is no question of maintenance in the present case. We offer no opinion as to whether a widow might successfully maintain a claim for maintenance out of property alienated by her husband without consideration and fraudulently if she herself was no party to the fraud, but that is not the present case. Here she claims to set aside fraudulent transactions by which her husband profited and by which she, as his representative, has also presumably benefited. This the Courts will not assist her to accomplish. The learned Judge has gone fully into the authorities on this question and we entirely concur in the conclusions at which he has arrived. We confirm the decree of the Lower Court and dismiss this appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.

1897. February 9. April 7.

YARAMATI KRISHNAYYA (DEFENDANT NO. 1), APPELLANT,

v.

CHUNDRU PAPAYYA AND ANOTHER (PLAINTIFF AND DEFENDANT NO. 2), RESPONDENTS.*

Fraud on creditors—Sham sale-deed to defeat creditors—Collusive decree—Suit to declare title of fraudulent transferor in possession.

A executed a sale-deed of his land to B. An attachment placed on the land was raised at the instance of B as vendee. The attaching creditor sued impeaching the transfer as collusive; but finally consented to a decree upholding the title of B, who then applied to be registered as owner in the place of A. A, who remained in possession throughout, resisted the application, and now sued B for a declaration that he was entitled to remain on the register as owner. It was alleged and proved that the apparent sale-deed was a sham, and had been executed for no consideration with intent to defraud the plaintiff's creditors, and

(1) I.L.R., 12 Mad., 260.

* Second Appeal No. 1455 of 1895.