

MUTHIAH
CHETTIAR
v.
KARUPPAN
CHETTI.

defendant we think he ought not to get his costs. We therefore direct that each party do bear his costs throughout.

DEVADOSS, J.
KUMARA-
SWAMI
SASTRI, J.

KUMARASWAMI SASTRI, J.—I agree and have nothing useful to add.

K.R.

APPELLATE CIVIL.

*Before Mr. Justice Kumaraswami Sastri and
Mr. Justice Ramesam.*

1927,
Merch 22.

K. M. CHOKKALINGAM CHETTIAR (PLAINTIFF),
APPELLANT,

v.

AT. AR. ATHAPPA CHETTIAR (FIRST DEFENDANT),
RESPONDENT.*

Indian Registration Act (XXI of 1908)—Bona fide purchase of property for the purpose of facilitating registration of a transaction—Bona fide inclusion of such property in a mortgage document—Fraud on registration—Validity of registration of the document.

Where a person *bona fide* buys property for the purpose of facilitating registration of a transaction and also *bona fide* includes it in a sale or mortgage, he cannot be held to commit a fraud on registration which would render the whole transaction invalid.

APPEAL against the decree of T. M. FRENCH, Subordinate Judge of Ramnad at Madura, in Original Suit No. 63 of 1921.

The material facts appear from the judgment.

A. Krishnaswami Ayyar (with *K. Balasubrahmanya Ayyar*) for appellant.

K. Bashyam Ayyangar for respondent.

* Appeal No. 290 of 1923.

JUDGMENT.

CHOKKA-
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This appeal arises out of a suit filed by the plaintiff as assignee of a deed of mortgage, Exhibit A, dated the 14th June 1913, executed by the first defendant in favour of the second defendant, his son-in-law. The assignment by the second defendant to the plaintiff is Exhibit B, dated the 20th July 1914. The second defendant at the time of the execution of Exhibit B also executed a security bond Exhibit F, indemnifying the plaintiff. The second defendant, according to the plaint, made several payments which are set out in the plaint, amounting in all to Rs. 12,307-0-3 and the present suit is filed for the recovery of the balance of Rs. 6,529-4-6 with costs and further interest. The mortgage deed recites the consideration and also states that two items of property were mortgaged. One is a house in Devakottai and the other is a house in Erode. The house in Erode was purchased under a sale deed Exhibit I on the 13th June 1913 for Rs. 200 and this was included in the deed of mortgage. The property purchased under Exhibit I was afterwards reconveyed to the vendor under Exhibit II, and Exhibit III recites that the Rs. 200 for which it was reconveyed should be paid to the mortgagee, thereby making it clear that on the date of the reconveyance the property was treated as subject to the mortgage. Two defences were raised for purposes of this appeal. It is said that item I, which was the property purchased in Erode, was purchased not *bona fide* with the object of acquiring the property but was purchased for the purpose of giving jurisdiction to the Erode Registrar to register the document, that no property was intended to be passed and that the transaction was intended for the purpose of effecting a fraud on registration. The other defence is that there was no consideration for the mortgage document

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itself as it was executed to prevent the second defendant from ill-treating or discarding his wife, the daughter of the first defendant. The Subordinate Judge found both these points in favour of the defendant and dismissed the suit. We shall first deal with the question of consideration.

[Their Lordships then dealt with the evidence and concluded that the mortgage document was supported by consideration and then proceeded as follows :—]

The next question for consideration is as regards the validity of the registration. The case for the respondent is that there was no intention to purchase the property, that no consideration was paid for it and that the whole transaction was a device to get Exhibit A executed and registered at Erode. There is no doubt that the parties wanted to get the document registered at Erode. But the question is whether in effecting that intention they really did anything which would invalidate the document. It will be a broad proposition unsupported by any authority to say that where a person *bona fide* buys property for the purpose of facilitating registration of a transaction and also *bona fide* includes it in a sale or mortgage, that he commits a fraud on registration, which would render the whole transaction invalid. In such a case nobody is cheated. There is the intention to buy the property. The title of the property is in the person who conveys it, or mortgages it. Under the Registration Act a copy of the registered document is sent to the other district where the other property is situated and the mere fact that a man wants to facilitate a transaction should not in our opinion render the transaction invalid if there is no other objection to the transaction. In cases where a non-existing property is mentioned or in cases where property which is existing but which does not belong to the mortgagor or vendor

is mentioned or in cases where the parties enter into a nominal transaction without any intention of title passing and yet the sale is registered, in such cases it may be said that there is a fraud with the object of defeating the provisions of the Registration Act. Here both the parties were aware of what was going on and nobody is cheated by it. Having regard to the evidence we are not justified in holding that there was no intention to purchase the property and include it under the mortgage. The fact that in our opinion weighs against the theory of any intention to defraud is that the reconveyance is about a year after the purchase and the reconveyance expressly states that the Rs. 200 which is the consideration for the reconveyance is to go in discharge of the mortgage debt. When we look at the case from the point of view of the recitals in the document it is difficult to hold that there was no intention to include the property under the mortgage security. Where a person "includes" the property in the mortgage security and asks the transferee to pay the Rs. 200 in discharge of the mortgage debt his intention is clear that the property should be included in the mortgage. Against this what have we got? We have only the statement of the 1st defendant and the statement of the vendor, who has himself transferred the property to some third person. There is nothing against his interest now because even if his evidence is disbelieved, he still remains the owner of the property competent to transfer it. We cannot say that the evidence of this D.W. 1 is entitled to any credit having regard to the recitals in the document. In the view we take of the case, we think it is unnecessary to consider the cases quoted by Mr. Bashyam Ayyangar for the respondent. We think that the plaintiff has proved his case. We reverse the decree of the Subordinate Judge

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with costs here and the Court below. There will be the usual mortgage decree to the plaintiff for the amount claimed with interest from the date of plaint till the date of realization.

Time for redemption is six months from this day.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Odgers and Mr. Justice Curgenvven.

HAJI SHAKOOR GANI SAIT (PLAINTIFF)

v.

THE B.L.S.N. Co., LTD., BY AGENTS, BINNY & Co.
(MADRAS), LTD. (DEFENDANTS).*

1927,
March 2.

Bill of Lading—Exemption for loss, etc., in respect of “re-shipped or re-exported goods”—Sugar once imported into Calcutta from Java but exported from Calcutta to Madras in another ship.

A clause in a bill of lading exempted the shipowner from liability for any loss in respect of “re-shipped or re-exported” goods.

Held, that the re-shipment or re-exportation need not be in the course of the voyage covered by the bill of lading, and that sugar which had been once imported into Calcutta from Java and from there shipped by the shipper to Madras in the bags in which the sugar had come from Java was “re-shipped and re-exported” within the meaning of the above clause.

CASE stated under section 69 of the Presidency Small Cause Courts Act in New Trial Application No. 201 of 1925 preferred against the decree in Suit No. 2129 of 1924.

The facts and the material clauses of the bill of lading are given in the judgment.

V. Thiagarajan for plaintiff.—The defendant company is liable for slackage as the goods are not “re-shipped or

* Referred Case No. 9 of 1926.