APPELLATE CIVIL.

Before Mr. Justice Waller and Mr. Justice Jackson.

1931, November 16.

APPATHURAI CHETTIAR AND TWO OTHERS (PLAINTIFF AND HIS LEGAL REPRESENTATIVES), APPELLANTS,

v.

A. L. A. R. R. M. V. VELLAYAN CHETTIAR (DEFENDANT), RESPONDENT.*

Code of Civil Procedure (Act V of 1908), O. XXI, r. 63—Claimant unsuccessful—Suit by—Onus of proof in.

In a suit by a defeated claimant under rule 63 of Order XXI of the Code of Civil Procedure the onus is on the plaintiff to prove the validity of the alienation under which he claims.

V. E. A. R. M. Firm and another v. *Maung Ba Kyin and another*, (1927) I.L.R. 5 Rang. 852 (P.C.), explained.

APPEALS against the decrees of the District Court of West Tanjore at Tanjore in Appeal Suits Nos. 223 and 232 of 1925 preferred against the decrees of the Court of the District Munsif of Mannargudi in Original Suits Nos. 122 and 123 of 1924.

T. M. Krishnaswami Ayyar and *K. V. Ramachandra Ayyar* for appellants.

K. V. Krishnaswami Ayyar, *V. Rajagopala Ayyar* and *T. V. Ramiah* for respondents.

Cur. adv. vult.

The JUDGMENT of the Court was delivered by

JACKSON J. JACKSON J.—These appeals arise out of suits brought by a defeated claimant under Order XXI, rule 63, of the Code of Civil Procedure. The lower appellate Court has dismissed the suits and plaintiff appeals.

The sole point for determination is whether the learned District Judge was correct in casting the

* Second Appeals Nos. 643 and 644 of 1927.

burden of proving the validity of the alienation under which he claimed upon the plaintiff. It is not a point of much practical importance in this case, or indeed in the generality of cases of this nature. Presumably an attaching defendant has been able to show good cause for impugning the alienation, else the claim would not have been defeated; then when the matter comes to a suit, it is largely a question of form whether the plaintiff begins by asserting the validity of his document, or the defendant by showing his proof of its invalidity. In the present case the defendant seems to be on strong ground, and if the lower appellate Court, after finding that the transaction relied upon by the plaintiff was highly suspicious, that it was extremely doubtful if any portion of the consideration for the sale came out of the plaintiff's pocket, that the plaintiff was father of his vendors, and that at the time of the sale these vendors were heavily indebted, had concluded by definitely finding the transaction to be nominal, there would have been no occasion for this second appeal. By its use of the phrase "the natural inference ought to be that the transaction was a nominal one" and by its observation "the burden of proof lay heavily upon the plaintiff", the door has been opened for the argument that in law the burden lies upon the defendant. Even then there is not much ground for discussion. The Courts of India have uniformly held that in these cases the burden lies upon the plaintiff. The point is very clearly stated by JENKINS C.J. in *Jamahar Kumari Bibi* v. *Askaran Boid*(1):

"The onus in this case is on Jamahar to show affirmatively that not only the ostensible but the real title also is in her. She is a plaintiff who is calling in question in a suit contemplated by the Code an adverse decision of the Court given, it is

(1) (1915) 30 I.C. 855.

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true, in a summary proceeding, but conclusive, subject to the result of this suit . . . The plaintiff in the circumstances of this case cannot discharge the burden of proof cast on her by merely pointing to the innocent appearance of the instruments under which she claims; she must show that they are as good as they look. If specific authority for this is needed it is furnished by many cases, among which are the decisions of Sir RICHARD COUCH in *Roop Ram Doss* v. *Saseeram Nath Kurmokar*(1) and of Sir CHARLES SARGENT in *Govind Atmaram* v. *Santai*(2)."

To these may be added a more recent case of our own Court in which a full discussion leads to the same conclusion, *Perayya* v. *Venkayamma*(3).

This would seem to be conclusive, but it is urged that the Privy Council ruling, *V.E.A.R.M. Firm and another* v. *Maung Ba Kyin and another*(4), places the burden of proof upon the defendant. It is significant that in this case the burden of proof is nowhere mentioned. It is ruled that, where there is a duly registered deed, obviously the party claiming to attach that property for somebody else's debt 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. . . . Supposing that the payment of this Rs. 3,000 in hard cash was not established it is not enough to allow their Lordships to draw the conclusion that it was a fraudulent sale."

The ruling does not state when the defendant must undertake his obvious task of showing that the duly registered deed was fraudulent. If, following the usual practice, the plaintiff assumes the original burden, and puts in the registered deed, then, if the defendant has nothing at all to say against it, the plaintiff would succeed. If, however, the defendant can then show

(1) (1875) 23 W.R. 141.
(2) (1887) I.L.R. 12 Bom. 270.
(3) (1924) 47 M.L.J. 14.
(4) (1927) I.L.R. 5 Rang. 852 (P.C.).

utter inadequacy of consideration or some other circumstance suggesting a fraudulent sale, the plaintiff would in turn have to plead something more than the innocent appearance of the instrument, he must show that it is as good as it looks.

The Judicial Committee does not say that the burden of proof in the first instance lies upon the defendant and not upon the plaintiff, and the notion that it has said so is only derived from the headnote of the Rangoon ruling. The point is cogently discussed in *Mahadeo Missir* v. *Ram Prashad*(1) and the same conclusion is reached on page 898 that no proposition of law casting the onus upon the defendant is laid down in *V.E.A.R.M. Firm and another* v. *Maung Ba Kyin and another*(2) and this becomes abundantly clear by reference to *Mohammad Ali Mohammad Khan* v. *Mt. Bismillah Begam*(3), where the Privy Council casts the onus upon the plaintiff.

In *Thillai Govindasami, In re*(4) TIRUVENKATACHARIAR J. also holds that the Rangoon ruling does not alter the law of onus in these cases, and in *Elayaperumal Thalaivar* v. *Vellaikannu Thevar*(5) SUNDARAM CHETTI J. is inclined to the same view, though he thinks that where the claim has been dismissed without preliminary investigation the onus may lie upon the defendant. Of course, as observed in the beginning of this judgment, the defendant cannot escape the burden at some stage or other. If the plaintiff produces his deed, and swears that it is genuine and for full consideration, and the defendant has nothing to say to the contrary, the plaintiff will succeed, and where the burden of the plaintiff is so light it is scarcely worth arguing whether

(1) (1929) I.L.R. 8 Pat. 890.
(2) (1927) I.L.R. 5 Rang. 852 (P.C.).
(3) (1930) 60 M.L.J. 341 (P.C.).
(4) A.I.R. 1928 Mad. 1259.
(5) (1929) 32 L.W. 57.

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it is more correct to say that the burden is originally upon the defendant, or upon the plaintiff. But where the defendant has something substantial to say to the contrary the real burden must inevitably fall upon the plaintiff to establish the right which he claims. The lower appellate Court has committed no error and these appeals must be dismissed with costs.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice Waller and Mr. Justice Jackson.

1931, December 3.

JAYANTI BHAGAVANULA NARASIMHAM (EIGHTH DEFENDANT), APPELLANT,

v.

JAYANTI VENKATASUBBAMMA AND ELEVEN OTHERS (PLAINTIFF AND DEFENDANTS NOS. 1 TO 7 AND 9 TO 11 AND PARTY-RESPONDENT), RESPONDENTS.*

Hindu Law—Widow—Maintenance—Suit for, after there has been a partition—Right of widow not enforceable against surviving coparceners who have not taken her husband's share.

When the widow of a coparcener sues for maintenance after there has been a partition, she cannot enforce her right against any of the surviving coparceners except those who have taken her husband's share.

Jayanti Subbiah v. *Alamelu Mangamma*, (1902) I.L.R. 27 Mad. 45, applied.

APPEAL against the decree of the Court of the Subordinate Judge of Bezwada in Appeal Suit No. 101 of 1926 preferred against the decree of the Court of the

* Second Appeal No. 2214 of 1927.