

fourteen-fifteenths and the defendant-respondent will get his costs from the plaintiffs-appellants to the extent of one-fifteenth only.

Appeal partly allowed.

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DEBI
DAYAL
v.SRI RADHA
KRISHNA

APPELLATE CIVIL

Before Mr. Justice Ziaul Hasan and Mr. Justice

A. H. deB. Hamilton

1939

March, 27

PUNDIT RAM RATAN LAL (PLAINTIFF-APPELLANT) v. Mst. AKHTARI BEGAM AND ANOTHER (DEFENDANTS-RESPONDENTS)*

Transfer of Property Act (IV of 1882), section 53, applicability of—Sale in lieu of dower debt—Property undervalued—Wife, whether bona fide transferee for value—Transfer, whether void under section 53, Transfer of Property Act.

A transfer of property even if it is made with the intention of defeating an anticipated suit or execution is not voidable under section 53 of the Transfer of Property Act merely because its effect or object was to prefer one creditor to another. That section contemplates a transfer which removes the whole or part of the debtor's property from the creditors as a body to the benefit of the debtor. *Badri Singh v. Hazari Singh* (1), *Bansidhar v. Nawab Jehan Begam* (2), and *Musahar Sahu v. Hakim Lal* (3), relied on.

The question whether or not a certain transferee is a *bona fide* transferee for consideration is a question of fact. *Bhagwant Appaji v. Kedari Kashinath* (4), and *Daulat Ram v. Ghulam Fatima* (5), relied on.

Where a person was prosecuted of dacoity but was acquitted and he then executed a will bequeathing all his property to his brother but only a few months after in supersession of the will he executed a sale deed of the property really worth Rs.15,000 to Rs.20,000 by undervaluing it, in favour of his wife, in lieu of Rs.8,500, a portion of her dower debt which was really Rs.25,000, and a creditor brought a suit for declaration that the sale deed was void under section 53 of the Transfer of Property Act as having been made with intent to defeat or delay the creditors, *held*, that as the plaintiff had not even brought a suit on the promissory notes in his favour when the

*Second Civil Appeal No. 245 of 1936, against the order of Pundit Tika Ram Misra, District Judge of Unao, dated the 21st April, 1936.

(1) (1930) 7 O.W.N., 123.

(2) (1938) I.L.R., 18 Luck., 655.

(3) (1915) L.R., 43 I.A., 194.

(4) (1901) I.L.R., 25 Bom., 202.

(5) (1925) 89 I.C., 953.

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sale deed in question was executed and there being no suggestion whatever, much less proof, that the defendant retains any benefit in the property after the sale in question in view of all the circumstances and of the fact that on the findings of the court below the dower debt of Rs.25,000 was actually due to the wife, on the date of the sale-deed, it is impossible to hold that she was not a *bona fide* transferee for consideration and that the sale deed was void under section 53, Transfer of Property Act.

Messrs. *Hyder Husain* and *H. H. Zaidi*, for the appellant.

Messrs. *M. Wasim*, *K. M. Shameem* and *Ali Hasan*, for the respondent No. 1.

ZIAUL HASAN and HAMILTON, JJ.:—This second appeal against a decree of the learned District Judge of Hardoi arises out of a suit brought by the plaintiff-appellant for a declaration that the sale deed of the 4th April, 1932, executed by defendant-respondent No. 2, in favour of defendant-respondent No. 1, is void under section 53 of the Transfer of Property Act as having been made with intent to defeat or delay the creditors of respondent No. 2.

Respondent No. 1, is the wife of respondent No. 2, and was married to him about the year 1924.

Both the courts below have found that at the time of the execution of the deed of sale in question a sum of Rs.25,000 was due to her from respondent No. 2, as her dower debt. The sale was made in lieu of a portion of the dower debt, namely Rs.8,500. Both the lower courts have also found that respondent No. 1, was a transferee in good faith and for consideration and have therefore dismissed the suit.

The plaintiff brings this appeal and his learned counsel has relied on certain circumstances as showing that the transfer in question was made with intent to defeat or delay the creditors. He has pointed out that respondent No. 2 was prosecuted for dacoity in 1931, but was acquitted, that in January, 1932 he executed a

will bequeathing all his property to his brother, that the property which according to the findings of the courts below is worth about Rs.15,000 to Rs.20,000 was undervalued in the sale deed and that in April, 1932 the sale deed in question was executed in supersession of the will. It was also urged that though the dower debt was Rs.25,000 yet if the respondent No. 1, had brought a suit for recovery of it, the husband would not have been liable under the Oudh Laws Act to more than Rs.4,000 or Rs.5,000.

We have given full consideration to the points urged on behalf of the appellant but are unable to hold that the sale deed in question is voidable under section 53 of the Transfer of Property Act. In the first place the question whether or not a certain transferee is a *bona fide* transferee for consideration is a question of fact as held in *Bhagwant Appaji v. Kedari Kashinath* (1) and *Daulat Ram v. Ghulam Fatima* (2). In the second place even if the question be gone into by this Court, we do not think there is any ground for holding that the respondent No. 1 was not a *bona fide* transferee for consideration. It is now well established that a transfer of property even if it is made with the intention of defeating an anticipated suit or execution is not voidable under section 53 of the Transfer of Property Act merely because its effect or object was to prefer one creditor to another and it has been held by their Lordships of the Judicial Committee that section 53 contemplates a transfer which removes the whole or part of the debtor's property from the creditors as a body to the benefit of the debtor, vide *Badri Singh v. Hazari Singh* (3), *Bansidhar v. Nawab Jahan Begam* (4), and *Musahar Sahu v. Hakim Lal* (5). In the present case the plaintiff-appellant had not even brought this suit against respondent No. 2, on the promissory notes in his favour when the sale deed in question was executed and there is no sug-

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(3) (1930) 7 O.W.N., 123.

(4) (1938) I.L.R., 13 Luck., 655.

(5) 1915) L.R., 43 I.A., 104.

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gestion whatever, much less proof, that the respondent No. 2 retains any benefit after the sale in question. In view of all these circumstances and of the fact that on the findings of the court below the dower debt of Rs.25,000 was actually due to the defendant No. 1, on the date of the sale deed, it is impossible to hold that she was not a *bona fide* transferee for consideration.

As to the contention that if the respondent No. 1 had brought a suit for recovery of her dower she could not have obtained a decree for more than Rs.4,000 or Rs.5,000 we may point out that this circumstance does not at all affect the nature of the sale made in her favour. A similar plea was taken in the case of *Bansidhar v. Nawab Jahan Begam* (1) referred to above and the learned Judges who decided the case remarked:

"But this does not by any means imply that the position of the wife is not that of a creditor. The fact that in a particular case the amount of the debt payable by the debtor has to be ascertained by the court cannot take the case out of the category of a debt or the person from whom the debt is payable out of the category of a debtor."

We are of opinion that the appeal has no force and it is dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL,

Before Mr. Justice Ziaul Hasan and Mr. Justice

A. H. deB. Hamilton

COMMISSIONER, LUCKNOW DIVISION, AND OTHERS

(DEFENDANTS-APPELLANTS) v. MST. BITANA

(PLAINTIFF-RESPONDENT)*

Under-proprietary rights—Shankalap—Claim in settlement court on basis of shankalap—Settlement court decree conferring heritable but non-transferable rights—Rent fixed as land revenue plus twenty per cent, as haq taluqdari—Decree whether conferred under-proprietary rights.

Where on a claim made in the settlement court on the basis of a *shankalap* the rights which were actually given by the

*Second Civil Appeal No. 368, of 1936, against the order of Rai Bahadur Pandit Manmatha Nath Upadhyay, District Judge of Sitapur, dated the 11th August, 1936.

(1) (1938) I.L.R., 13 Luck., 655.

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