

## APPELLATE CIVIL.

Before Mr. Justice Broadway and Mr. Justice Harrison.

MULA RAM (DEFENDANT) Appellant,

*versus*

JIWANDA RAM (PLAINTIFF) } Respondents.  
AND BAHADRI (DEFENDANT) }

1923

Feb. 23.

Civil Appeal No. 246 of 1920.

*Civil Procedure Code, Act V of 1908, Order XXI, rule 54—Prohibitory order but no proclamation—whether there is a valid attachment of immoveable property—Transfer of Property Act, IV of 1882, section 53—Transfer fraudulent and fictitious in part—whether whole transfer should be treated as fraudulent.*

A prohibitory order regarding the land in suit under Order XXI rule 54, was served upon B, the judgment-debtor, on 6th June 1915, but there was no proclamation as laid down in the second portion of the rule. On 7th August 1915 B. executed a lease of the land for 20 years in favour of J. R., the plaintiff, at an annual rental of Rs. 80 which was payable in a lump sum of Rs. 1,600 at the time of the execution of the lease; of this, Rs. 1,000 was to be credited in B's account with J. R. and Rs. 600 was to be paid in cash at the time of registration. It was found as a fact that the payment of Rs. 600 had not been proved.

*Held*, that in order to constitute a valid attachment, the proclamation described in the second portion of rule 54 of Order XXI of the Code of Civil Procedure must be carried out.

*Sinnappan v. Arunachalam* (1), followed.

*Held also*, that as it was clear that a very substantial portion of the lease was fraudulent and fictitious, the whole transfer must be treated as fraudulent and effected with the object of defeating the decree-holder and was consequently voidable on the principle laid down in section 53 of the Transfer of Property Act.

*Chidambaram Chettiar v. Sami Aiyar* (2), *Palaniappa Mudali v. Official Receiver of Trichinopoly* (3), and *Subroy Goundan v. Perumal* (4), referred to.

(1) (1919) I. L. R. 42 Mad. 844 (F. B.).

(2) (19 6) I. L. R. 30 Mad. 6.

(3) (1914) 25 Indian Cases 948.

(4) (1917) 43 Indian Cases 956.

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MULA RAM  
v.  
JIWANDA RAM.

*Second appeal from the decree of J. A. Ross, Esquire, District Judge, Shahpur, at Sargouha, dated the 20th October 1919, reversing that of Lala Ude Ram, Munsif, 1st Class, Jhang, dated the 10th March 1919, and decreeing the claim.*

RAM CHAND MANCHANDA, for Appellant.

SHAMAIR CHAND and SAGAR CHAND, for Respondents.

The judgment of the Court was delivered by—

HARRISON J.—The facts of this case are that on 6th June 1915 a prohibitory order under Order XXI, rule 54, regarding the land in suit was served upon Bahadri, judgment-debtor, at the instance of his decree-holder, Mula Ram. On 7th August 1915, a very peculiar lease was executed by Bahadri in favour of one Jiwanda Ram in accordance with which the land in question was leased for a period of 20 years on an annual rental of Rs. 80 a year. In pursuance of that lease mutation was effected, the order showing that the whole of this sum of Rs. 1,600 was alleged by the lessee to have passed at the time of the execution of the lease, Rs. 1,000 in the form of credit in his own account and the balance of Rs. 600 partly in cash payment at the time of registration, and partly in payment to previous creditors of the transfer. After presenting an unsuccessful objection the lessee, Jiwanda Ram, has now brought this suit for a declaration that the land cannot be attached by the decree-holder Mula Ram in execution of his decree. The suit was dismissed by the trial Court on the finding that the whole of this transfer was tainted with fraud; that, at any rate, so far as Rs. 600 were concerned, it was not proved that any part of this consideration had passed and that, therefore, on the principle laid down in section 53 of the Transfer of Property Act the alienation was void against the previous attaching creditor. This finding has been set aside on appeal by the learned District Judge who has given a somewhat sketchy finding to the effect that Jiwanda Ram was a *bona fide* creditor of Bahadri presumably to the extent of Rs. 1,000, but has given no finding whatever as to the passing of the consideration for the smaller items totalling Rs. 600.

On second appeal it is urged that the prohibitory order constituted a sufficient attachment and made section 64 of the Civil Procedure Code applicable to this case. This point has been dropped as it is clearly established by *Sinnappan v. Annachalam* (1) that in order to constitute a valid attachment the proclamation described in the second portion of rule 54 of Order XXI must be carried out.

The second point urged is that in the absence of a finding as to the payment of Rs. 600 it is open to this Court to come to a finding itself and, if it be held that the items in question did not pass and that they are fraudulent and fictitious, then the decree-holder Mula Ram is entitled to avoid the whole transaction and to proceed against the land in execution. In the absence of any finding by the learned District Judge we have considered the evidence on the subject or rather the absence of any evidence and we find ourselves in complete agreement with the trial Court. A sum of Rs. 210 is entered as having been paid before the Sub-Registrar at the time of registration, but no endorsement was made to this effect, and the Sub-Registrar himself has not been produced. Similarly a sum of Rs. 270 is shown to have been paid to Amir Chand but Amir Chand has not been produced nor has any receipt been tendered. It is stated that Sukh Dial was also paid in satisfaction of a decree which he held, but no copy of that decree has been produced.

We find that no portion of the Rs. 600 is proved to have passed and taking everything into account the very peculiar nature of the deed, the peculiar conduct of the parties and more especially that of the present plaintiff in anticipating the payments which were to have extended over 20 years, the fact, of which there is no denying, that so far as the transferer is concerned he acted throughout in bad faith and with the object of defeating, delaying and obstructing his decree-holder, we find that not only was the transferer acting in fraud of his creditor decree-holder but that the transferee had knowledge of the fact and aided and abetted him in doing so.

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(1) (1919) I. L. R. 42 Mad. 844 (F. B.).

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The only question remaining is how far the whole transfer is affected on its being shown that a very substantial portion is fraudulent and fictitious. The law on this point has been clearly laid down in *Chidambaram Chettiar v. Sami Aiyar* (1). That case dealt, it is true, with moveable property, but the principle there enunciated was accepted in the case of immoveable property, also in *Palaniappa Mudali v. Official Receiver of Trichinopoly* (2), and *Subroy Goundan v. Perumal* (3). We find that the whole transfer must be treated as fraudulent and effected with the object of defeating the decree-holder.

We, therefore, accept the appeal and restore the decree of the trial Court. The costs of Mula Ram will be paid throughout by the plaintiff Jiwanda Ram in all Courts.

C. H. O.

*Appeal accepted.*

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(1) (1906) I. L. R. 30 Mad. 6.

(2) (1914) 25 Indian Cases 943.

(3) (1917) 43 Indian Cases 956.