

LETTERS PATENT APPEAL.

*Before Sir Shadi Lal, Chief Justice and Mr. Justice
LeRossignol.*

SUNDER SINGH AND OTHERS (PLAINTIFFS)

Appellants

versus

RAM NATH AND ANOTHER (DEFENDANTS)

Respondents.

Letters Patent Appeal No. 174 of 1924.

*Transfer of Property Act, IV of 1882, section 53—Gift
by a Hindu of immovable property to wife and infant son—
Donor subsequently declared an insolvent—Suit by creditors
to avoid the gift—Hindu Law—Donor's claim for mainte-
nance—whether preferable to claim of creditors—Abatement
—death of some of the parties (creditors) and their represen-
tatives not brought on the record.*

In 1915, L. R. a Hindu gifted in favour of his wife and his infant son a shop and land (apparently the whole of his immovable property), and in 1918 he applied to be declared an insolvent and was so adjudicated in March 1919. The creditors then instituted the present suit to avoid the aforesaid gift on the ground that it was a fraudulent transaction made for the purpose of defeating the donor's creditors at the time when he was financially embarrassed.

Held, that the transaction was clearly fraudulent, and that though the donor was, under the personal law, bound to maintain his wife and infant son, that obligation is a personal obligation, and the payment of debts takes precedence over a right of maintenance.

Held also, that the last clause of section 53 of the Transfer of Property Act has no application to this case, as it refers only to a transferee for consideration who has acted in good faith.

Held further, that the fact that 3 of the parties (creditors) to the suit died long ago and their representatives had not been brought on the record did not cause the appeal to abate, as one creditor alone could have maintained the suit on behalf of all.

*Appeal under clause 10 of the Letters Patent
from the judgment of Sir Henry Scott-Smith J.,
dated the 28th May 1924.*

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FAKIR CHAND, for Appellants.

BADRI DAS, for Respondents.

The judgment of the Court was delivered by—

LEROSSIGNOL J.—In May 1915 Labhu Ram gifted in favour of his wife and his infant son a shop and land, apparently the whole of his immoveable property. In 1918 he applied to be adjudicated an insolvent and was so adjudicated in March 1919, whereupon certain of his creditors instituted the suit out of which this appeal arises to avoid the aforesaid gift on the ground that it was a fraudulent transaction made for the purpose of defeating the alienor's creditors at a time when he was financially embarrassed.

The trial Court and the first appellate Court decreed for the creditors on the finding that at the time of making the gift the donor was unable to pay his debts and the transaction was carried out in fraud of his creditors and with the intention of concealing his property.

On second appeal to this Court the Single Bench came to the conclusion that “the real object of the gift was to make provision for the maintenance of Labhu Ram's wife and son, his own financial condition at the time being embarrassed.”—“There is no suggestion that if there was any fraudulent intention on the part of the donor, his wife was privy thereto”, and it upheld the gift. Before this Bench it is contended on behalf of the creditors that the finding that the transaction was a fraudulent one was a question of fact which could not be impeached in second

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appeal, and that in any case the transaction was a gratuitous one, and any claim by the donees in respect of maintenance must be postponed to the claims of the donor's legitimate creditors. On behalf of the respondents it is contended that the gift was not gratuitous, inasmuch as the donor was under a legal obligation to maintain his wife and infant son.

Our finding is that the transaction was clearly fraudulent. No doubt under his personal law the donor is bound to maintain his infant son and wife, but that obligation is a personal obligation and the payment of debts takes precedence over a right of maintenance. The last clause of section 53 of the Transfer of Property Act refers only to a transferee for value who has acted in good faith, and in this case good faith has not been established.

We agree that the transfer was fraudulent, and accepting the appeal we decree for the plaintiffs with costs throughout.

For the respondents a preliminary objection was raised that three of the parties to the suit died long ago and their representatives had not been brought on the record. Of these persons one was a plaintiff and two were defendants (creditors), but the appeal has not abated for that reason, for one creditor alone could have maintained this suit on behalf of all. We overrule the preliminary objection.

A. N. C.

Appeal accepted.