LETTERS PATENT APPEAL.

Before Sir Ernest H. Goodman Roberts, Kt., Chief Justice, and Mr. Justice Mosely.

DEOKALI PATTAK *v.* RAMDEVI AND ANOTHER.*

1940

July 1.

Second appeal—Civil Procedure Code, s. 100—Finding of fact by first appellate Court based on sufficient evidence—Conclusions derived from findings of fact—Ambiguity and unsatisfactory conclusion of first appellate Court—Concurrent finding of fact—High Court's interference—Representative suit by sole creditor—Transfer of Property Act, s. 53.

If there is evidence upon which a finding of fact has been arrived at, which could have been arrived at with propriety by the first appellate Court, the High Court on second appeal under s. 100 of the Civil Procedure Code will not interfere with such finding.

Asgar Ali v. *C.V.R.M. Firm*, I.L.R. 14 Ran. 81 ; *U Rai Gyaw Thoo & Co., Ltd.* v. *Ma Hla U Pru*, [1940] Ran. 180, referred to.

The High Court can, however, adjudicate as matter of law on the soundness of conclusions which have been derived from findings of fact.

Ram Gopal v. *Shamaskhaton*, 19 I.A. 228, referred to.

The High Court can also intervene on a question of fact where the matter has been ambiguously dealt with and no satisfactory conclusion has been arrived at in the Court below. But to constitute a concurrent finding of fact it is not necessary for the District Court to say in terms that it agrees in every detail with the trial Court.

Ma Hla Me v. *Maung Hla Baw*, I.L.R. 8 Ran. 425, referred to.

A suit on behalf, or for the benefit, of all the creditors can be instituted by a creditor, and must be so instituted, in order to set aside a transfer under s. 53, of the Transfer of Property Act even if he were the sole creditor.

A.K.A.C.T.V. Chettyar v. *R.M.A.R.S. Firm*, I.L.R. 12 Ran. 666, referred to.

Bhattacharyya for the appellant.

Srinivasan for the respondents.

ROBERTS, C.J.—This is a Letters Patent appeal in respect of which a certificate has been given that the case is a fit one for appeal, and the question before us is whether the finding of the District Judge, Meiktila, that a gift by registered deed, dated the 25th October 1933, by one Ganesh Prasad to his wife Ramdevi, of two houses, was voidable as being made with intent to defeat or delay his creditors, within the meaning of section 53 of the Transfer of Property Act. If it is a

* Letters Patent Appeal No. 5 of 1940 from the judgment of this Court in Civil 2nd Appeal No. 191 of 1939.

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finding of fact it cannot be interfered with by reason of the existence of the rule which has been recently explained in *U Rai Gyaw Thoo & Co., Ltd.* v. *Ma Hla U Pru* (1). The District Judge's finding purported to be one of fact, and we have to decide whether there was any material, sufficient in law, from which the District Judge could arrive by inference or deduction at the conclusion at which he arrived.

It is, of course, necessary for us to distinguish between evidence which would be sufficient and evidence which we ourselves might think satisfactory. It is not allowable for the learned Judge in second appeal, or for us, to say merely that we are not satisfied that matters of fact were proved, within the meaning of section 3 of the Evidence Act : we should have to go further, in order to impugn the finding of fact of the learned District Judge, and say that there was no sufficient evidence. And the question here is whether the learned Judge was right in saying that there was no sufficient evidence in law, *i.e.*, no material at all, from which a deduction and inference could be made. If there is any evidence at all, it is plain that we cannot interfere.

We can, as has been pointed out by Mr. Srinivasan, referring to *Ram Gopal* v. *Shamskhaton* (2), adjudicate on the soundness of conclusions which have been derived from findings of fact. On the other hand, if there is evidence upon which a finding of fact has been arrived at, which could have been arrived at with propriety, our function is at an end. See *Asgar Ali* v. *C.V.R.M. Firm* (3), where the judgment of the Court ended with these words :

" In the present case both Courts have found that as a matter of fact the transfer of the land in question was fraudulent, and

(1) [1940] Ran. 180. (2) (1892) 19 I.A. 228.
(3) (1935) I.L.R. 14 Ran. 81.

against this finding of fact no second appeal lies. The appeal is, therefore, dismissed with costs.

What, then, was the evidence upon which the learned District Judge purported to arrive at a finding of fact ? First of all, it is said by the learned Judge in second appeal that there was evidence that Ganesh Prasad was not financially embarrassed. That evidence, however, was disbelieved in the trial Court. It is clear that the gift which he purported to make to his wife on the 25th October 1933 was made four days after he got a notice of demand for Rs. 2,500 from a creditor, Jagat Singh, and shortly after the gift to his wife had been made Jagat Singh was obliged to file a suit in order to get this money paid to him.

There is, moreover, evidence that the present appellant Deokali Pattak accepted the mortgage of some property of Ganesh Prasad in April 1934 to cover a debt of Rs. 2,532 due to the former. It is said that there is evidence on the record to show that the mortgaged property covered the amount of the debt, but, in our opinion, this is by no means clear. There is no doubt that the appellant took what he could then get by way of security, the mortgage being by way of renewal of an old promissory note. It is stated in the judgment appealed against that " it is inconceivable that the respondent would have accepted such a mortgage if he had not himself been satisfied at the time that his debt was sufficiently secured." But there is no contention that this was a mortgage which was taken by a person who was parting with his property in consequence of having obtained proper security ; on the contrary, he was a creditor who was trying to cover himself by every means in his power.

Not only did he take a mortgage of the property, but Ganesh Prasad also had a policy on his life which he mortgaged along with these lands, and it was in

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evidence and accepted that this was the subject of a prior assignment to his wife; this was found by the learned Subdivisional Judge and inferentially confirmed by the District Court.

There were other creditors who obtained decrees within a short time afterwards. It is, to my mind, unnecessary to go into their claims in detail; it is enough to say that, when an examination of the position comes to be made, there were grounds for saying that Ganesh Prasad was financially embarrassed both after as well as before the time he made the purported gift of the houses to his wife.

It has been urged on behalf of the respondent that the gift of the two houses was made not by Ganesh Prasad alone but by Ganesh Prasad and Muniram. Muniram is dead and it appears that his only legal representative is Lal Chand, the second respondent, who would be his grandson (Muniram being the father of Ganesh Prasad) : however that may be, I cannot think that this point is one of importance since, the learned Judge having held that the gift was voidable and of no effect, it is clear that both the lower Courts accepted the plaintiff's views that the gift was made in collusion with Muniram, and that Muniram's name was used for the purpose of making what was represented as a gift, whereas in fact it was merely a device in order to defeat or delay the creditors.

Then it is said that this ought to be a representative suit and that the plaintiff-appellant represents no one except himself. It is, I think, clear that the suit has been instituted on behalf, or for the benefit, of all the creditors. The case to which reference may be made in this connection is that of *A.K.A.C.T.V. Chettyar* v. *R.M.A.R.S. Firm* (1). Even if the plaintiff were the

(1) (1934) I.L.R. 12 Ran. 666.

only creditor, I do not see why he should not, in those circumstances, bring a suit of this kind, and I agree with the observation of the learned District Judge in this connection.

It is urged that all the creditors have been paid off now and that therefore it is impossible to say that the transfer is void ; but what we have to consider is the action of Ganesh Prasad on the 25th October 1933 and not whether the creditors have been defeated since : it is quite clear that many of them may have been delayed.

The last point that was taken was that the learned District Judge did not specifically say that there was fraud and there must be a concurrent finding of fact so that the Subdivisional Court and the District Court are agreed before the learned Judge in second appeal is bound. There is, however, in my opinion, no magic in any special formula of words, nor is the District Judge bound to take every sentence of the learned Subdivisional Judge and say in terms that he agrees with it as though he were a litigant dealing with all his opponent's pleadings. He uses in a part of his judgment the phrase " it is not unreasonable to presume ", and it is said that it is ambiguous. In my opinion, it means no more than that he was satisfied that the Subdivisional Judge was right in the conclusion at which he arrived, or at least that he was unwilling to disturb it. There I see a clear distinction between this case and the case of *Ma Hla Me* v. *Maung Hla Baw* (1), which is only authority for the proposition that the High Court may intervene on a question of fact where the matter has been ambiguously dealt with and no satisfactory conclusion has been arrived at in the Court below.

(1) (1930) I.L.R. 8 Ran. 425.

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Bearing all these matters in mind, I am of opinion that the whole case is really summed up in the observation of the Bench in *Asgar Ali* v. *C.V.R.M. Firm* (1) to which I have referred in the earlier part of my judgment. And, therefore this appeal must be allowed and the judgment and decree of the learned Judge in second appeal must be set aside and the judgment of the District Court must be confirmed and the decree of the Subdivisional Court upheld with costs in all Courts, advocate's fee in this Court ten gold mohurs.

MOSELY, J.—I agree.

(1) (1935) I.L.R. 14 Ran. 81.