

LETTERS PATENT APPEAL.

Before Tek Chand and Coldstream JJ.

CHATTRU MAL (PLAINTIFF) Appellant

versus

MST. MAJIDAN AND OTHERS (DEFENDANTS)

Respondents.

1934

Feb. 8.

Letters Patent Appeal No. 63 of 1928.

Insolvency—Objections that applicant had fraudulently transferred all his property to his wife—not adjudicated on by Insolvency Judge—who gave leave to creditors to file suit in Civil Court—Declaratory Suit—whether barred under Transfer of Property Act, IV of 1882, section 2 (d), 53—or Specific Relief Act, I of 1877, section 42.

In 1921 *A* (defendant 1) and his wife *M* (defendant 2) appointed an arbitrator to settle certain alleged disputes between them. The arbitrator gave his award in April, 1921, by which the whole of the property of *A* was transferred to *M*. A consent decree in terms of the award was passed in favour of *M* against *A* in June, 1921, and in execution *M* obtained possession of the property in question. At the time of the arbitration *A* owed large sums of money to the plaintiff and defendants 3-8 who had no knowledge of the award or the decree. In October, 1923, *A* filed an application to be adjudicated an insolvent stating that he did not own any property. The plaintiff and other creditors opposed the application, alleging that the transfer of property by the award, and the decree in favour of *M* had been made fictitiously with a view to defraud the creditors, and that the entire proceedings were collusive and not binding on them.

The Insolvency Judge, without going into the genuineness or validity of the transfer, passed an order in February 1924 adjudicating *A* an insolvent, and stating expressly that any of the creditors were at liberty to bring a separate suit in the Civil Courts to have the transfer declared void. Accordingly in June, 1924, the plaintiff brought the present suit for a declaration that the decree of June, 1921, in terms of the

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award by which *A* had transferred his property to *M* is ineffectual against the rights of plaintiff and other creditors (defendants 3-8). The District Judge, in agreement with the trial Court, found that the entire proceedings in arbitration and the consent decree were collusive and were a mere device to defraud the creditors. On second appeal a Single Bench of the High Court reversed the decree holding that the suit was not maintainable as (a) leave to sue had not been obtained from the Insolvency Judge, (b) the suit was barred by section 2 (d), read with section 53 of the Transfer of Property Act, and (c) the declaration asked for could not be granted under section 42 of the Specific Relief Act.

Held, that the decision of the Single Bench could not be sustained on any of the grounds given, for

(a) sanction of the Insolvency Judge to bring a suit in the Civil Court having been once given, there was no necessity for the plaintiff to make another application for a repetition of the previous order;

(b) the Transfer of Property Act, not having been extended to the Punjab, the technical provisions contained in section 2 (d) of that Act was no bar to the present suit; and

(c) the plaintiff being clearly deprived of his right to recover his dues from the property of *A* by the collusive award and consent-decree and being materially prejudiced by these proceedings had a right to seek a declaration to this effect in the Civil Court, and the proviso to section 42 of the Specific Relief Act was no bar to the suit.

Louis Dreyfus & Co. v. Jan Mohammad (1), *Gondu v. Pulsiram* (2), and *Chan Tat Thai v. Ma Lat* (3), relied on.

Appeal under Clause 10 of the Letters Patent from the decree of Zafar Ali J. passed in C. A. No. 1593 of 1927, on 22nd December, 1927, reversing that of R. S. Lala Shibbu Mal, Additional District Judge, Karnal, dated 23rd March, 1927 (which affirmed that of Agha Khan Ahmad Khan, Subordinate

(1) (1919) 49 I. C. 421. (2) 1930 A. I. R. (Rang.) 27.

(3) (1916) 33 I. C. 124.

Judge, 2nd Class, Karnal, dated 11th February, 1925), and dismissing the plaintiff's suit.

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CHARANJIVA LAL AGGARWAL, and N. C. MEHRA, 1ST. MAJIDAN.
for H. D. BHALLA, for Appellant.

GHULAM RASUL, for Respondents.

TEK CHAND J.—In 1921 Abdul Majid, defendant TEK CHAND J.
No. 1, and his wife *Mussammât* Majidan, defendant
No. 2, appointed an arbitrator to settle certain alleged
disputes between them. The arbitrator gave his
award on the 4th of April, 1921, by which the whole
of the property of Abdul Majid was transferred to
Mussammât Majidan. A consent-decree in terms of
the award was passed in favour of *Mussammât*
Majidan against Abdul Majid from the Court of *Lala*
Gulwant Rai, Subordinate Judge, on the 20th of June,
1921, and in execution of this decree *Mussammât*
Majidan obtained possession of the properties in
question. It has been found as a fact that at the
time of the arbitration, Abdul Majid owed large sums
of money to the present plaintiff and defendants
Nos. 3-8, but none of them had any knowledge of the
award or the decree.

In October 1923 Abdul Majid filed an application
for being adjudicated an insolvent, stating that he did
not own any property. The plaintiff and other credi-
tors opposed the application, alleging that the so-
called transfer of immovable property by the award
and the decree in favour of *Mussammât* Majidan had
been made fictitiously, with a view to defraud the
creditors and that the entire proceedings in the arbi-
tration, including the award and the decree based
thereon, were collusive and not binding on them. The
Insolvency Judge did not think it proper to go into the

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question of the genuineness or validity of the transfer in those proceedings, as the transaction was more than two years old. He, therefore, passed an order adjudicating Abdul Majid an insolvent on the 18th of February, 1924, but expressly stated in the same order that any of the creditors might, if so advised, bring a separate suit in the Civil Court to have the aforesaid transfer declared void.

Accordingly on the 4th of June, 1924, the plaintiff brought the present suit claiming a declaration that the decree, passed by *Lala Gulwant Rai*, Senior Subordinate Judge, on the 20th of June, 1921, in terms of the award, by which Abdul Majid had transferred his immovable property to his wife, *Mussammat Majidan*, in order to cause loss to his creditors is ineffectual against the rights of the plaintiff and the other creditors, defendants Nos. 3 to 8. The trial Court held that there was no real dispute between Abdul Majid and *Mussammat Majidan*, that the entire proceedings in arbitration and the consent-decree were collusive and fraudulent and that the transfer was made to defeat and delay the creditors. On these findings the suit was decreed. This decree was affirmed on appeal by the District Judge, who also held that Abdul Majid and his wife had resorted to "a clever device for practising fraud upon the creditors."

On second appeal by *Mussammat Majidan*, the decree was reversed by a Single Bench of this Court on the grounds that the suit was not maintainable, as (a) leave to sue had not been obtained from the Insolvency Judge, (b) such a suit is barred by section 2 (d) read with section 53 of the Transfer of Property Act,

and (c) the declaration asked for could not be granted under section 42 of the Specific Relief Act.

The plaintiff has appealed under Clause 10 of the Letters Patent, and after hearing counsel for both sides, I am constrained to hold that the decision of the learned Judge cannot be sustained on any of the grounds mentioned above. As stated above, the plaintiff and the other creditors opposed the application of Abdul Majid for adjudication as an insolvent on the ground that the transfer in favour of *Mussamat* Majidan was collusive and fraudulent and did not affect their rights. It appears from a perusal of the record of the Insolvency Court that they had actually examined a number of witnesses in support of their allegation, but the learned Judge stopped recording further evidence, being of opinion that the transaction having been effected more than two years before the application for insolvency, its genuineness and validity should more appropriately be determined in a separate suit. He accordingly passed an order of adjudication, but in this order he stated specifically that the plaintiff or the other creditors might, if so advised, file a separate suit for having the transfer declared void. It is thus clear that the permission to sue was granted by the Insolvency Judge, and it was not necessary for the plaintiff to make another application at a later stage for the repetition of the previous order. It may also be noted that the objection as to want of leave to sue had not been raised in the trial Court or before the District Judge, nor was it mentioned in the memorandum of second appeal.

The second objection is based on the provisions of section 2 (d) of the Transfer of Property Act. That Act, however, has not been extended to the Punjab and

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the Courts in this Province are not bound by its technicalities, though frequently reference is made to such of its provisions as embody the principles of the Common Law, based on equity, justice and good conscience. The right of a creditor to sue for a declaration, that his debtor had transferred his immovable property with a view to defeat or delay his rights, was not recognized in this country for the first time by the Transfer of Property Act. Such suits were held to be maintainable in Bengal and other provinces long before that Act was placed on the Statute book, *Freeman v. Fairlie* (1) and *Abdul Hye v. Mir Mohammad Mozaffar Hossein* (2), and in the Punjab, where the Act is not in force, creditors have been allowed to seek relief on general principles of equity, justice and good conscience, *Lakhmi Narain v. Tara Singh* (3), *Mussamat Champo v. Shankar Das* (4), *Tapassi Ram v. Raja Ram* (5) and *Mohammad Ishaq v. Mohammad Yusuf* (6). It is not denied that section 2 (d) of the Transfer of Property Act contains a highly technical provision, which is not binding on the Courts in this Province and cannot be invoked to defeat a suit by a creditor brought in the Punjab. The learned counsel for the appellant argued that on a correct interpretation of that section a suit like the one before us was not barred and he referred us to several rulings in support of his contention. It is, however, not necessary to pursue this matter in view of the fact that the Act is not in force in the Punjab.

The third objection based on the proviso to section 42 of the Specific Relief Act appears to be equally

(1) (1836-37) 1 Moo. I. A. 305.

(4) 74 P. R. 1912.

(2) (1884) I. L. R. 10 Cal. 616 (P.C.).

(5) (1929) 115 I. C. 417.

(3) 6 P. R. 1901.

(6) (1927) I. L. R. 8 Lah. 544.

untenable. As stated above, the plaintiff and the other creditors had debts due to them at the time when the arbitration proceedings in question were held. The collusive award and the consent-decree based thereon, therefore, clearly deprived the creditors of their right to recover their dues from the property of Abdul Majid. They were materially prejudiced by these proceedings and had a right to seek a declaration to this effect in the Civil Court. It has not been shown that they could have claimed any further relief than what they actually asked for in the plaint. The suit cannot, therefore, be said to be barred by the proviso to section 42. [See in this connection *Louis Dreyfus & Co. v. Jan Mohammad* (1), *Gondu v. Tulsi-ram* (2) and *Chan Tat Thai v. Ma Lat* (3)].

Counsel for the respondent attempted to argue that the award was not collusive or fraudulent. But on this point the learned District Judge has recorded a very clear finding of fact. This finding is based on legal evidence, and the question cannot be agitated again.

For the foregoing reasons, I would accept this appeal, set aside the order of the learned Judge in Chambers, and restore the decree of the learned District Judge. The plaintiff-appellant will have his costs in all Courts from defendants Nos. 1 and 2.

COLDSTREAM J.—I concur.

A. N. C.

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Appeal accepted.

(1) (1919) 49 I. C. 421. (2) 1930 A. I. R. (Rang.) 27.

(3) (1916) 33 I. C. 124.