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or in any way derogate from the plaintiff's right to bring the property to sale and confer an absolute right to the property upon the purchaser in execution."

These remarks apply on all fours to the present case, where, as in the case of *Lope v. Barve*⁽¹⁾, the defendant claims under a purchase at a Court-sale in execution of a money-decree. Further *Shivjiram v. Waman*⁽²⁾ was followed by another Bench of this Court (Parsons and Ranade, JJ.) in *Rachappa Nilkanthappa v. Mangesh Mahadaji Sharaff*.⁽³⁾ We are bound by these decisions which apply to the facts of this appeal. We therefore confirm the decree with costs.

Decree confirmed.

⁽¹⁾ (1898) P. J. p. 36.

⁽²⁾ (1897) 22 Bom. 939.

⁽³⁾ (1898) P. J. p. 386.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Batty.

MALUKCHAND AMARCHAND (ORIGINAL PLAINTIFF), APPELLANT, v.
MANILAL NANSHA (ORIGINAL DEFENDANT), RESPONDENT *

Registration Act (III of 1877), sec. 17 (e)—Composition deed—Conveyance—Trustees under the deed.

The expression "composition deed" as used in section 17 (e) of the Registration Act (III of 1877) denotes a transaction entered into by a debtor, insolvent or in embarrassed circumstances, with his creditors with the object of paying the latter a composition upon their claims. The deed must in substance be of the nature of a composition, not a conveyance. Hence, where a debtor transfers his property to a creditor or creditors in consideration of his debts, i.e., where he parts with his rights absolutely, the transaction may partake of the nature of a composition, but it is in reality a conveyance. It is otherwise where with the consent of his creditors he parts with his property in favour of a trustee for the purpose of paying the composition upon the claims, and the trustee is authorized to deal with the property for that purpose.

A composition deed for the benefit of all the creditors, not comprising the whole of the property of the judgment-debtor, is not void, if the transaction is

* Second Appeal No. 418 of 1903.

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fair and *bonâ fide* and in the ordinary course of business or upon the pressure of the creditors. It does not become void by the circumstance that it is signed by some only of the creditors and that among them are some whose debts are barred by limitation.

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SECOND appeal from the decision of P. E. Percival, Joint Judge of Ahmedabad, confirming the decree passed by Vadilal T. Parekh, Joint Subordinate Judge of Ahmedabad.

The plaintiff obtained on the 19th April, 1901, a money-decree against one Chhaganlal Parshottam in suit No. 320 of 1900. He preferred a *darkhast* (application) No. 661 of 1901 for execution of the decree and got the house in dispute attached.

Chhaganlal Purshottam passed a composition deed on the 14th December, 1900, whereby Chunilal Vakhatchand, Chunilal Chhotalal and Mohanlal Khushal were appointed trustees. It was signed by the judgment-debtor and some of his creditors, but it was not registered; and the judgment-debtor made over to the trustees his immoveable property, account books and goods for sale on the day he signed the deed.

The trustees sold the house in dispute to the defendant on the 5th June, 1901, for Rs. 1,760; and handed over possession to him. On the 21st October, 1901, the defendant got the attachment by the plaintiff raised.

The plaintiff then filed a suit for a declaration that he had a right to attach and sell the house in suit in execution of his decree, alleging that the composition deed was not valid, as it was not registered; that all the property of the judgment-debtor was not mentioned in the deed; that some property was fraudulently concealed by the judgment-debtor; that it was signed by some creditors whose claims were barred by limitation; that the trustees appointed under the deed fraudulently passed a deed of sale to the defendant; and that the deed of sale was nominal.

The Subordinate Judge dismissed the plaintiff's suit holding that the sale to defendant was not nominal and fraudulent, and that the trustees under the deed were authorized to sell the house.

This decree was on appeal confirmed by the Joint Judge.

The plaintiff preferred a second appeal.

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Manmukhram K. Mehta, for the appellant (plaintiff):—The composition deed requires registration, as it relates to immoveable property. Although it is styled a composition deed, it is more than that: trustees are appointed and property is transferred to them. Under section 5 of the Indian Trusts Act (II of 1882) the trust in relation to immoveable property is not valid, as the deed is not registered. The case of *Subbaraya v. Vythilinga*⁽¹⁾ is distinguishable. In it, the effect of section 5 of the Trusts Act was not considered. If it be held that the deed requires registration, then the trust is invalid and the defendant gets no title. The deed is also invalid under section 53 of the Transfer of Property Act (IV of 1882), as it was passed fraudulently with the intention of defeating the judgment-creditor.

V. G. Ajinkya, for the respondent (defendant):—Both the Lower Courts have found as a fact that the defendant was a *bona fide* purchaser for value, and that the deed in question is a *bona fide* transaction without any intention on the part of the debtor to defraud creditors. This being a concurrent finding of fact, is binding on this Court.

The deed in question being a composition deed does not require registration: see Registration Act (III of 1877). The mere fact that the debtor wishes that the composition should be carried on in a particular manner does not change the nature of the deed so as to require registration under section 5 of the Trusts Act (II of 1882). It may be a trust deed and yet it may fall within the exemptions under section 17 of the Registration Act (III of 1877). We rely on *Subbaraya v. Vythilinga*.⁽¹⁾

CHANDAVARKAR J.:—The first question in this second appeal is whether the deed, Exhibit 37, which is called a composition deed in the document itself and so treated by the Lower Appellate Court, is void for want of registration under the Indian Trusts Act, because the property is vested by the deed in a trustee and so made subject to a trust. The Lower Appellate Court has held that the deed, being a composition deed, did not require re-

(1) (1892) 16 Mad. 85.

gistration, according to cl. (e) of section 17 of the Indian Registration Act. But it is urged for the appellant that as it is a trust deed, it cannot be valid unless registered, as required by section 5 of the Trusts Act. It is not unusual, however, for a composition deed to be at the same time a trust in the sense that a trustee is appointed by the debtor with the consent of the creditors who join it for the purpose of giving effect to the composition. Cl. (e) of section 17 of the Registration Act was obviously intended to exempt from registration "any composition deed," that is, every deed the essence of which is composition and the trust enters into it as a mere accident. In a trust deed the owner of the property parts with his ownership in favour of a trustee who becomes the owner for another person who is called the *cestui que trust*. In a composition deed, whereby a debtor compounds with his creditors and places all his property at the disposal of a trustee with the consent of his creditors for the purposes of the composition, the trustee is appointed only for the purpose of giving effect to the terms of the composition and the property of the debtor vests in the trustee only for that purpose. The ownership of the property remains in the debtor and the property is transferred to the trustee for the benefit of the creditors, that is, subject to the right of the latter under the deed to have their debts as compounded paid out of the property through the medium of the trustee. The mere fact, therefore, that a certain kind of trust enters into its constitution and character is not sufficient to take the deed out of the category of a composition deed within the meaning of cl. (e) of section 17 of the Registration Act, where the composition is either its main purpose or unchangeable characteristic and the trust is only incidental.

The term "composition deed" is not indeed defined in the Registration Act, but it is a well known term of art, familiar to lawyers, and used of a transaction entered into by a debtor, insolvent or in embarrassed circumstances, with his creditors with the object of paying the latter a composition upon their claims. As was pointed out in *Ex parte Milner*⁽¹⁾ there may be a composition between a debtor and his creditors under the provisions of a Statute and there may be what is called a

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common law composition, not entered into under the provisions of any Statute. The insolvency or embarrassed circumstance of the debtor is one essence of a composition deed. Another essential feature of it is that, where the debtor with the consent of his creditors appoints a trustee to take charge of all his property for the purpose of giving effect to the composition, the trustee is a trustee for the creditors, only to the extent of that purpose, but no right to the property itself is transferred to the creditors. The trustee holds the property for the debtor, who remains in the eye of law the owner, and for the benefit of the creditors. In one sense no doubt there is a transfer of the property to the trustee, and to that extent the debtor's right, title or interest is extinguished and a right is created in the trustee. But as the transfer of the right to the trustee and the extinction of the right of the debtor are of a limited or qualified character, and the trustee, so far as the ownership of the property is concerned, is a trustee for the debtor and his creditors, the Legislature would appear to have provided that a deed of this kind should not fall within the class of compulsorily registrable documents mentioned in clauses (b) and (c) of section 17 of the Registration Act. The exceptions in section 17 of the Act to clauses (b) and (c) seem to be framed upon the principle that where either a document affects immoveable property *indirectly* by extinguishing a right existing in favour of one person and creating a right in favour of another or where otherwise it is a document with the *inherent* characteristic of publicity, such as a decree of a Court or an award, or a grant of immoveable property made by Government, it is not necessary to register it. A composition deed whereby a trustee is appointed to pay the composition out of the debtor's property is one instance of such an *indirect* transfer, and, moreover, it is attended by a certain amount of publicity. The next exception mentioned in cl. (f) is an instrument relating to shares in a Joint Stock Company, where the assets of such Company consist in whole or in part of immoveable property. There, again, when a shareholder in the Company transfers his shares to another, he in effect transfers his right to or interest in the immoveable property of the Company, but the transfer is in that respect, and so far as it affects immoveable property, *indirect* as in the case of a composition deed.

These considerations are sufficient to make it clear that when the Legislature says that a composition deed need not be registered it means that the deed must in substance be of the nature of a composition, not a conveyance. Where a debtor transfers his property to a creditor or creditors in consideration of his debts, *i. e.*, where he parts with his rights absolutely, the transaction may partake of the nature of a composition but in reality and substance it is not a composition but a conveyance. It is otherwise where with the consent of his creditors he parts with his property in favour of a trustee for the purpose of paying the composition upon the claims and the trustee is authorized to deal with the property for that purpose.

Now, the deed in the present case falls within the latter description. Certain immoveable and moveable property of the debtor and his account books are vested in the trustee for the purpose of paying his creditors. There is no conveyance of the immoveable property of the debtor to the creditors. Under these circumstances we think the Lower Courts were right in holding that the deed fell within the exemption cl. (e) of section 17 of the Registration Act. The deed recites that the composition is for the benefit of *all* the creditors and all of them are to derive equal benefit from it.

The next question is, whether the transaction evidenced by this deed was sham. Upon this point some of the facts surrounding the transaction have to be borne in mind. One of them is that the property covered by the deed does not exhaust the whole of the debtor's assets but is only a part thereof, though a substantial part, the rest being left with the debtor for his benefit. This circumstance by itself is, however, no badge of fraud. "If a person assigned *part* only of his property in trust for creditors, then, if the transaction was *fair* and *bona fide*, and in the ordinary course of business, or upon the pressure of the creditors, it was not open to objection; but if the settlor contemplated bankruptcy or even thought it probable, though not inevitable, and wished to give an undue preference to certain creditors over others, it was *fraudulent*, and constituted an act of bankruptcy." (Lewin on Trusts, p. 565, 9th Edition⁽¹⁾.) None of the circumstances alleged against the deed and found proved

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(1) 10th Edition p. 583.

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by the Lower Courts falls within the latter class of cases. The transaction was clearly intended for the benefit of all creditors, and plaintiff is not suing for and on their behalf. Therefore, section 53 of the Transfer of Property Act has no application. The object of the deed, as is apparent from its recitals and terms, was that all the creditors of the debtor should be paid their debts rateably or proportionately by the trustees. It is true that as a matter of fact only some of the creditors have signed the deed, and among these are creditors whose debts were barred by limitation at the date of the deed. The creditors who have not joined can nevertheless take benefit under the deed, but they cannot impugn it except on the ground that it represents a sham or fictitious transaction—which, however, cannot be said of the deed on the findings of the Courts below. Nor is the fact that creditors whose claims are time-barred are parties to the deed sufficient in law to invalidate the transaction. As pointed out by the Subordinate Judge, though among the creditors who have joined the deed there are some whose debts are time-barred and who cannot legally enforce their payment, it may be—we do not say it is—open to the trustees, whose duty it is to pay off debts legally payable, to decline to recognise the barred claims before paying off claims not barred. At any rate, what the rights of the creditors whose claims are barred are under the deed is a question which may arise when the trustees either proceed to pay the creditors or decline to pay them, but we do not think that the mere fact that these creditors have assented to the deed is indicative of bad faith on the part of the debtor and all the creditors, who have assented to the deed, or proof that the transaction is colourable. There is no other circumstance in the case affecting the good faith of the transaction or its genuineness. It was found by the Subordinate Judge, and the fact has not been disputed before us, that the trustees, acting under the deed, had issued public notices appointing a day for the sale of the property and that the defendant had become its purchaser having bid at the highest price. Under these circumstances we see no ground of law for disturbing the finding of the Court below that the composition deed is not fictitious or vitiated by fraud or want of good faith. We confirm the decree with costs.

Decree confirmed.