

## APPELLATE CIVIL.

Before Sir Francis William Maclean, Knight, Chief Justice, and Mr. Justice Banerjee.

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May 17.

ISHAN GHUNDER DAS SARKAR (PLAINTIFF) v. BISHU SIRDAR  
AND OTHERS (DEFENDANTS.) \*

*Transfer of Property Act (IV of 1882), section 53—Rights of a transferee in good faith and for consideration—Good faith, Meaning, of—Effect of transfer made with the object to delay or defeat a creditor, the transferee not being aware of such an intention—Second appeal—Civil Procedure Code (Act XIV of 1882), sections 554 and 555—Findings of fact—Inference of law which the facts found were insufficient to justify.*

Where a transferee for value is not aware of any intention on the part of the transferor to defeat or delay his creditors, but has knowledge only of an impending execution against the transferor, such knowledge itself is not sufficient to vitiate the transfer, and does not make the transferee a transferee otherwise than in good faith within the meaning of section 53 of the Transfer of Property Act (IV of 1882).

*Ramburam Singh v. Jankee Sahoo* (1), referred to.

Where the lower Appellate Court arrives at a conclusion, which is an inference based upon an erroneous view of law, the judgment is open to question in second appeal.

*Lachmeswar Singh v. Manowar Hossein* (2), and *Ram Gopal v. Shamskhaton* (3), referred to.

THE facts of the case, so far as they are necessary for the purposes of this report, and the arguments, appear sufficiently from the judgment of the High Court.

Mr. Woodroffe, Mr. W. C. Bonnerjee and Babu Upendra Nath Mitter for the appellants.

Mr. Jackson and Babu Girija Sunker Mazoomdar for the respondents.

\* Appeal from Appellate Decree No. 803 of 1895 against the decree of B. C. Mitra, Esq., District Judge of Faridpore, dated the 30th of January 1895, affirming the decree of Babu Beni Madhub Roy, Munsif of Goalundo, dated the 28th of December 1892.

(1) 22 W. R., 473.

(2) I. L. R., 19 Calc., 253 ; L. R., 19 I. A., 48.

(3) I. L. R., 20 Calc., 93 ; L. R., 19 I. A., 228.

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The judgment of the High Court (MACLEAN, C.J., and BANERJEE, J.) was as follows:—

This appeal arises out of a suit brought by the plaintiff (appellant) for declaration of his title to, and for confirmation of his possession of, an eight annas share of a certain *jote*, on the allegation that the said share, which belonged originally to defendants Nos. 5 and 6, was purchased by the plaintiff from these defendants for Rs. 1,000 on the 18th Pous 1297, (1st January 1891), under a registered deed of sale; that defendant No. 4 having, in execution of a decree held by him against defendants 5 and 6, attached the said share, the plaintiff preferred a claim, but the same was disallowed; and that the property was sold in execution of the decree of defendant No. 4 and purchased by defendants Nos. 1 to 3 on the 21st March 1891. Two other persons were made defendants in the case, but subsequently, at the plaintiff's instance, their names were removed from the record.

The suit was defended by defendants Nos. 1 to 4, and their defence, so far as it is necessary to be considered for the purposes of the present appeal, was a denial of the plaintiff's purchase as a real and *bond fide* transaction.

The first Court found that the purchase of the plaintiff was not a real and *bond fide* transaction, but was merely a nominal one, resorted to with the object of defeating the claim of defendant No. 4, and it accordingly dismissed the suit.

On appeal by the plaintiff, the lower Appellate Court has found that the plaintiff purchased the property, but not in good faith, and it has accordingly affirmed the decree of the first Court, dismissing the suit. In second appeal it is contended for the plaintiff that the decision of the lower Appellate Court is wrong in law, because the mere circumstance of the plaintiff having been aware of the fact that the defendant No. 4 had taken out or was going to take out execution against defendants Nos. 5 and 6 was not sufficient to make his purchase one not in good faith, as the lower Appellate Court has held. It is further contended that the only thing necessary to constitute a purchase in good faith was that the purchase should be real and for value, and a real purchase for value, even if it was with the object of defeating or delaying

creditors, would still be a purchase in good faith and entitled to be upheld; and in support of this contention the cases of *Wood v. Dixie* (1), *Hale v. Saloon Omnibus Co.* (2), *Ramburun Singh v. Jankee Sahoo* (3), *Sankarappa v. Kamayya* (4), *Suba Bibi v. Balgobind Das* (5), and *Sakharam Mahipat v. Dawud Valad Jawabhai* (6) are relied upon.

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On the other hand, it has been argued for the respondents that the question of good faith is a question of fact, and the lower Appellate Court having found that the purchase of the plaintiff was not in good faith, it is not open to this Court to interfere with its judgment in second appeal; and in support of this argument the case of *Durga Chowdhry v. Jawahir Singh Chowdhry* (7) is referred to.

Now, the validity of the purchase under which the plaintiff claims is to be determined with reference to section 53 of the Transfer of Property Act, which enacts that "every transfer of immoveable property" (we are only quoting so much of the section as is applicable to the present case) "made with intent to defeat or delay the creditors of the transferor is voidable at the option of any person so defeated or delayed." And then, after laying down a rule of evidence, the section further proceeds: "Nothing in this section shall impair the rights of any transferee in good faith and for consideration."

Reading this section as a whole then, what it means, so far as it is applicable to a case like the present, is this,—that where a transfer of immoveable property is made with intent to defeat or delay any creditor of the transferor it is voidable at his option; but where a transferee for value takes the property in good faith, that is without being a party to any design on the part of the transferor to defeat or delay his creditors, his rights shall not be impaired by anything contained in this section.

The words "good faith" have not been defined in the Act; nor is there any definition of the expression in the General Clauses Act of

(1) 7 Q. B., 892.

(2) 4 Drew., 492.

(3) 22 W. R., 473.

(4) 3 Mad. H. C., 231.

(5) I. L. R., 8 All., 178.

(6) I. L. R., 4 Bom., 76 note.

(7) I. L. R., 18 Calc., 23; I. R., 17 I. A., 122.

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But a consideration of the section, taken as a whole, leads us to the view we have taken, that the object of the last paragraph of section 53 is to protect an innocent transferee for value, notwithstanding that the transferor may be actuated by a desire to defeat or delay his creditors. But there arises a further question,—whether, where a transferee for value has knowledge of an impending execution against the transferor, such knowledge itself is sufficient to vitiate the transfer and make it one not in good faith, notwithstanding that the transferee may not be aware of any intention on the part of the transferor to defeat or delay his creditors, and notwithstanding that he may honestly believe that the sale is resorted to for the purpose of paying the creditors. We are of opinion that mere knowledge of an impending execution against a transferor is not sufficient to make the transferee a transferee otherwise than in good faith, when he does not share the intention of the transferor to defeat or delay his creditors.

This view is fully supported not only by reason but also by authority : see the case of *Ramburun Singh v. Jankee Sahoo* (1). We are not prepared, however, to accept as correct the extreme contention urged on behalf of the appellant, that all that was necessary to constitute a transferee in good faith within the meaning of section 53 was that the transfer should be real, and that, although the transferee might share the intention of the transferor to defeat or delay creditors, he would still be a transferee in good faith. It cannot be said that a transferee for value who accepts the transfer for the purpose of helping the transferor to convert his immoveable property into money which can easily be concealed and kept out of the reach of his creditors, and thus defeat or delay the creditors, is a transferee in good faith within the meaning of section 53. We do not think that the cases cited support this view. They are cases under 13 Elizabeth, c. 5 ; and though that Statute forms in part the groundwork of section 53 of the Transfer of Property Act, its language is different, and the Indian law goes much further than

(1) 22 W. R., 473.

the English Statute. In the case of *Wood v. Dixie* (1) it was held that a transfer of property for good consideration was not void merely because it was made with intent to defeat the expected execution of a judgment-creditor; and the same view was taken in the case of *Hale v. Saloon Omnibus Co.* (2); but they do not go so far as the appellant's contention goes. Indeed, it would almost be a contradiction in terms to say that a transferee for value, who takes the transfer with the intention of helping the transferor to convert his immoveable property into money which can easily be concealed, and thus to defeat or delay his creditors, should nevertheless be treated as a transferee in good faith, and the transfer to him should be upheld, though section 53 says that a transfer made with such intention is voidable at the option of the creditors. Where the transferee is a creditor of the transferor, and accepts the transfer in satisfaction of the debt due to him, though with the knowledge that his doing so has the effect of defeating other creditors of the transferor, the transfer may come within the last paragraph of section 53 of the Transfer of Property Act. But that is not the case before us, and it is unnecessary to say more on this point.

There arises then the question whether the Court of Appeal below has come to a finding that the purchase of the plaintiff was not in good faith, so as to preclude this Court from interfering in second appeal. No doubt, if the lower Appellate Court has found upon the evidence that the plaintiff was not only aware of the impending execution of decree against his vendors but also shared the intention of his vendors to defeat or delay that execution, the finding would be unassailable in second appeal. But if, after having found that the intention of the vendors was to defeat or delay their creditors, and that the plaintiff was only aware of an impending execution against the vendors and nothing more, the lower Appellate Court has come to the conclusion that the plaintiff's purchase was one not in good faith, then that conclusion is an inference based upon this view of law, that mere knowledge on the part of the transferee that there is an impending execution, coupled with an intention on the part of the transferor to defeat or delay his creditors—an intention not known to

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the transferee—necessarily makes the purchase one other than in good faith—a view of the law which, as we have shown above, is erroneous. And, if that be so, the judgment is open to question in second appeal.

In support of this view we may refer to the cases of *Lachmeswar Singh v. Manowar Hossain* (1) and *Ram Gopal v. Shamskhaton* (2).

Now, as we understand the judgment of the learned Judge below, he has not come to any finding that the plaintiff shared the intention of defendants Nos. 5 and 6 to defeat or delay their creditors; but he has come to the conclusion that the plaintiff's purchase was not in good faith, because he found that the plaintiff was aware of the impending execution of decree against defendants Nos. 5 and 6 by defendant No. 4, and of that alone. But, as we have said above, such knowledge may be consistent with good faith in the plaintiff, and the purchase by the plaintiff will not be vitiated on the ground of bad faith, unless it can be clearly proved that the purchaser was a party to a design of his vendors to defeat or delay their creditors. We should add that we do not think that the learned Judge below was right in importing into section 53 the definition of constructive notice given in section 3 of the Act.

In this view it becomes necessary to remand the case to the lower Appellate Court, in order that it may determine the question whether the plaintiff purchased the property in dispute from defendants Nos. 5 and 6 with the object of enabling them to defeat or delay their creditor, the defendant No. 4, or with the knowledge that they intended to do so.

If it come to an affirmative finding on that question, the suit must be dismissed. If it come to a negative finding the plaintiff will be entitled to a decree.

Costs will abide the result.

S. C. G.

*Appeal allowed. Case remanded.*

(1) I. L. R., 19 Calc., 253; L. R., 19 I. A., 48.

(2) I. L. R., 20 Calc., 93; L. R., 19 I. A., 228.