

purports to be, is clearly laid down, and we follow that decision, which, we think, is in accordance with law and in consonance also with the decisions of this Court. We are of opinion that the present suit will lie, and we, therefore, reverse the decrees of the lower Courts, and order that the suit be heard on the merits. Costs to abide the result.

Decree reversed and case remanded.

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[434] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nanabhai Haridas.

MOTILAL RAVICHAND (*Original Plaintiff*), *Appellant v. UTAM JAGJIVANDAS (Original Defendant), Respondent.**
[22nd December, 1888.]

Debtor and creditor—Sale to creditor for old debt and new advance, on debtor's bankruptcy—Intent to delay and defeat creditors—Bona fides of purchaser—Fraudulent preference—Statute 13 Eliz. c. 5.

On the 27th February, 1886, the firm of Ranchhod Jamna, a family firm, was on the point of failing, being heavily indebted. On that day, the managing member of the firm executed four sale deeds, comprising all the property of the firm, in favour of four different creditors of the firm, of whom the plaintiff was one. The deed executed in favour of the plaintiff was in consideration of a then existing long-standing debt and a fresh advance of Rs. 3,400 made by him to the firm. The next day the firm stopped payment. The defendant was one of the creditors of the firm, and sought to attach and sell the property conveyed to the plaintiff in execution of a decree which the defendant had obtained against the firm. The plaintiff's objection to the attachment by the defendant having been disallowed, he brought the present suit against the defendant, to establish his right to the property attached under his sale-deed. The defendant contended (*inter alia*) that the sale to the plaintiff having been effected in order to delay and defeat the creditors and to give undue preference to the plaintiff, was void.

Held, on the evidence, that the sale to the plaintiff was, on the part of the plaintiff at least, a *bona-fide* sale in consideration of a debt still due, and for payment of which the plaintiff had been pressing, and Rs. 3,400 in cash; and that there were no circumstances in the case which showed that the plaintiff in entering into it was a party to any scheme to delay the general body of the creditors. That being the case, the sale was not impeachable at the instance of the defendant; although, having regard to the fact of its having been negotiated on the eve of the failure of the firm it might possibly be regarded as a sale by which the plaintiff obtained an unfair preference, and as such perhaps be impeachable at the suit of the whole body of creditors.

In re Johnson Golden v. Gillam (1) referred to and followed.

[F., 15 M.C.C.R. 104 (106); R., 25 B. 202 (213); 16 M. 397 (399); 13 C.P.L.R. 180 (186); (1900) P.L.R. 513 (520); D., 22 B. 255 (258).]

THIS was an appeal from a decision of Dayaram Gidumal, Acting Assistant Judge of Ahmedabad.

Chunilal, Chotalal, Dayabhai and Jivanlal were members of a joint Hindu family, of whom Chunilal was the head and manager, which carried on business under the name of Ranchhod Jamna.

* Appeal No. 71 of 1888.

(1) L.R. 20 Ch. Div. 389.

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[435] The plaintiff was a relative of Chunilal's family, and had certain monetary dealings with the firm, which stood indebted to the plaintiff to a considerable amount. The firm got involved in pecuniary difficulties, and was on the verge of bankruptcy on the 27th February, 1886, on which day Chunilal passed four sale-deeds of all the property of the firm to four different persons, of whom the plaintiff was one. The sale-deed to the plaintiff was in satisfaction of the existing debt and for a fresh advance of Rs. 3,400 to Chunilal by the plaintiff. The deed was registered on the 3rd March, 1886, and arrangements for the delivery of possession of the property to the plaintiff appeared to have been made, though no change of possession had actually taken place.

The defendant was one of the creditors of the firm, and attempted to attach and sell, in execution of a decree obtained by him against the firm, the property conveyed to the plaintiff. The plaintiff set up his purchase, and moved to raise the attachment, but failed.

The plaintiff, thereupon, brought the present suit to establish his right to the property conveyed to him by the deed dated the 27 February, 1886.

The defendant impeached the purchase by the plaintiff as fraudulent and collusive, and made with the view of defrauding the creditors.

The Court of first instance found that the sale to the plaintiff was effected to defeat and delay the creditors, and that the plaintiff was a party to the fraud. It, therefore, rejected the plaintiff's suit.

The plaintiff appealed to the High Court.

Inverarity (Messrs. *Bhaishankar* and *Dinsha* and *Ganpat Sadashiv Rao* with him), for the plaintiff (appellant).—The only question here is, whether the deed of conveyance of the 27th February is a genuine transaction. My client's vendor was in difficulties at the time of the sale, but there was a real debt due to my client. There is no undue preference here. Except in the case of insolvency, a debtor is at liberty to pay any of his creditors he chooses. The sale was a *bona-fide* sale. My client pressed for [436] payment, and out of pressure the vendor executed the deed. Pressure prevents a transaction from being fraudulent—*Dadapa v. Vishnudas*(1).

The fraudulent preference must be within two months of insolvency: here the vendor filed his petition one year after the sale. The sale was for a consideration actually paid, and for the former debt, which was not then barred. It is the assignees of an insolvent alone who can impeach such a preference. *Ex parte Lancaster*; *In re Marsden*(2) is a case in point to show that where there is a *bona-fide* claim there is no question of preference. Here the vendor admits receipt of consideration and the execution of the conveyance, and afterwards becomes hostile to my client.

Kirpatrick (Rav Sabab *Vasudev Jagannath Kirtikar* with him), for the defendant (respondent).—The whole case is to be looked at. The debtor here was in difficulties, and was being prosecuted by the Bombay Bank for loans advanced to him. The conveyance to the appellant was a sham transaction. I rely on the facts found by the lower Court. The debtor and the appellant are related, and there is a strong presumption that the transaction was entered into to protect the property. The debt due to the appellant was secured by ornaments lodged with him by the debtor. This is, therefore, a clear case of undue preference, and the sale must be held

(1) 12 B. 424.

(2) L. R. 25 Ch. Div. 311.

void : cites *Rangilbhai Kalyandas v. Vinayak Vishnu* (1). The judgment of the lower Court went upon Stat. 13 Eliz., c. 5, and was a correct one. The principle of that statute is held to apply in India : see *Abdul Hye v. Mir Mohammed Mozaffar Hossein* (2). There is an analogy between a creditor and an assignee at home. The debtor here had been largely indebted to several persons, and for an inadequate consideration disposes of the property. The alleged old debt of the appellant was not ascertained. The debt was barred under art. 85 of the Limitation Act XV of 1877, being of more than three years' standing. All the circumstances taken into consideration establish a case of fraud committed to delay and defeat the creditors, as found by the lower Court. The decision of the lower Court must, therefore, be upheld.

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[437] *Inverarity* in reply :—Where there is a valuable consideration the Court does not scrutinize it, unless it is grossly inadequate. Cites *Lady Arundell v. Phipps* (3). My client made inquiries as to the value of the property, and then paid the price. There was a general account here, and the question of limitation does not arise. It is necessary to prove, in such a case, how far the vendee has been a party to the fraud by his vendor—*In re Johnson Golden v. Gillam* (4). Here in no way was my client a party to the fraud, if any was intended to be committed by the debtor.

JUDGMENT.

SARGENT, C. J.—The plaintiff has brought this suit to establish his right to the property in question conveyed to him by a sale-deed of 27th February, 1886, executed by the firm of Ranchhod Jamna. The defendant, on the other hand, who claimed to be entitled to attach it in execution of his decree obtained against the above firm, contends that the plaintiff's conveyance was fraudulent, as having been made with the intent to defeat and delay the creditors of the firm. The following facts are not in dispute. The plaintiff, who is a shroff doing business at Ahmedabad, had for several years made advances to, and discounted bills for, the banking firm of Ranchhod Jamna. At the close of February, 1886, the firm of Ranchhod Jamna was in difficulties and finally stopped payment on the 27th February, 1886. However, before the firm stopped payment, four sale-deeds, comprising all the immoveable property of the firm, were executed, one of which was the sale-deed to plaintiff of the 27th February, 1886, relating to the property in question, and these deeds were all registered at the same place on the 3rd March, 1886, on which day, or the day following, Chunilal Maganlal, the managing member of the firm, absconded and remained away several months, the firm being then in debt to the extent of about Rs. 60,000, including a debt of Rs. 20,000 owing to the Bank of Bombay. The Assistant Judge has found that Chunilal's intention in executing the four sale-deeds was to defeat and delay his creditors, and that plaintiff knew of this intention, and was a party to it—and the plaintiff now appeals against that decision.

[438] We entirely agree with the Assistant Judge that upon these facts the only possible conclusion is that the sale of all the immoveable property was a contrivance intended by the firm to delay and embarrass

(1) 11. B. 666.

(3) 10 Ves. Jun. 139.

(2) 10. C. 616.

(4) L R. 20 Ch. Div. 389 (394).

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their creditors. But the question, whether any one of the above sales can be avoided, must depend upon how far the particular vendee can be deemed to have been a party to such intent. As Mr. Justice Fry remarks in *In re Johnson; Golden v. Gillam* (1) "it could not be contended that the mere fraudulent intent of the vendor could avoid the deed if the purchaser were free from that fraud," and such is obviously the equitable view of the matter independently of the Statute of Elizabeth. It is necessary, therefore, to consider the nature of the particular sale-deed in question and the circumstances under which it was executed, in order to arrive at a conclusion as to whether the sale to the plaintiff was *bona fide* as regards creditors.

Chunilal Maganlal, (witness 65), was the managing member of the firm, and his statement is that the purchase-money was retained by all the purchasers for the purpose of settling the firm's debts after he had absconded; and, supposing this to have been the case, we entirely agree with the Assistant Judge that it would be difficult to arrive at any other conclusion than that the purchasers were parties to the scheme for delaying the creditors of the firm. This is, however, distinctly denied by the plaintiff so far as he is concerned, and he, moreover, repudiates all knowledge of the sale to the other parties until they met at Chunilal's mill for the purpose of registration. The other vendees were not called by either party; and as no direct evidence was given by the defendant connecting plaintiff with Chunilal's transactions with the other vendees, he was not, we think, bound to call them.

It is further to be remarked that plaintiff stood in a perfectly different position as regards the firm from the other vendees. Although connected by his son's marriage with a member of the family constituting the firm, he was an important creditor of the firm who had been admittedly dunning the firm for payment, and there is, therefore, no improbability in his having entered into an arrangement with Chunilal quite independently of the other [439] vendees and in ignorance of Chunilal's negotiations with them. It is true that the deeds were all registered on the same day at Chunilal's mill, but this is quite consistent with their having been negotiated independently of one another. We think, therefore, that, under the circumstances of the case as disclosed by the evidence, the transaction with plaintiff should be considered independently altogether of what may have passed between Chunilal and the other vendees. At the same time we cannot doubt that when the sale to plaintiff was negotiated, he was aware that the firm was in serious difficulties. His dealings with the firm and relationship with the family by marriage make it highly improbable that he should have been ignorant of their financial position, and of the fact that the firm was in a state of serious embarrassment.

Assuming, however, that this transaction was negotiated in contemplation of the approaching failure of the firm, and that it might possibly be regarded as amounting to a fraudulent preference in favour of the creditor and impeached, as such, in a suit framed for the purpose by a person representing the body of creditors, it cannot, we think, be ground for impeaching the sale in the present suit, the object of which is to determine whether the defendant, an individual creditor, was entitled to attach and sell the property in execution of his own judgment-debt.

(1) L. R. 20 Ch. Div. 389 (394).

If the sale is to be avoided in this suit, it must be because it was not effected *bona fide*, but with the intention of assisting Chunilal in delaying the creditors of the firm; and we proceed to consider it from that point of view. The sale purports to be in consideration of an existing debt, the amount of which has not been questioned, and a sum of Rs. 3,400 in cash. A part of the debt was probably, as found by the Assistant Judge, barred at the time of the sale. The Rs. 2,500 paid in *Samvat* 1941 would be appropriated to the balance of Rs. 6,772-4 at the end of *Samvat* 1939. But the residue of that balance would have been barred at the date of sale. However, Chunilal, who was certainly a hostile witness to the plaintiff, does not allude, in his examination, to any part of the debt being barred; but he insinuates, rather than alleges that plaintiff had other security for the debt at the time in the shape of ornaments. The Assistant Judge has come to the conclusion [440] that this was so. But beyond Chunilal's statement, which is very vague, there is no evidence to establish it satisfactorily. There are no entries in support of it in the books either of plaintiff or the firm, and it is distinctly denied by the plaintiff. It is true that plaintiff admits that ornaments had been deposited with him some two years before by Mahakore, the mother of his daughter-in-law, but he says the deposit was only for safe custody owing to a family dispute, and that the ornaments had been returned to Mahakore, and the receipt for them was given in evidence, and not impugned; and Bhogilal's deposition shows that plaintiff made the same statement ten days after the sale, when the former went to try and get an advance on the security of the ornaments. We think therefore, that it would be unsafe to conclude, upon the evidence in the case, that plaintiff had other security for the balance of debt when the sale took place.

As to the Rs. 3,400 to be paid in cash, Chunilal's account is that it was brought by plaintiff to the mill where the registration took place, but was taken back by him; the payment is, however, endorsed by Chunilal on the sale-deed; and there is no evidence, but Chunilal's statement, that it was taken back by the plaintiff, as opposed to the latter's distinct denial that such was the case. On the other hand, there is satisfactory evidence to show that the sale was intended to be completed by possession. It is in evidence that blank *kabulayats* to be signed by the tenants were obtained by plaintiff at the time of sale, and that plaintiff's karkun took immediate steps to obtain their signatures until obstructed by Chunilal some ten or fifteen days after the sale. The plaintiff and Chunilal differ as to the cause of the dispute which led to this conduct on the part of Chunilal. The plaintiff says it was owing to his refusing to advance Rs. 10,000 to Chunilal on his being threatened with criminal proceedings by the Bank of Bombay, who were his creditors for the amount of Rs. 20,000. Chunilal, on the contrary, says it was owing to plaintiff's refusal to settle his debts, as he had promised to do, and for which express purpose he had kept back the Rs. 3,400. There is no independent evidence as to this; and it is difficult to suppose that had the Rs. 3,400 been retained, as Chunilal says, by plaintiff for the purpose of settling his debts, plaintiff, [441] who occupies a respectable position as a banker, could have acted, as he did, when Chunilal was threatened by the Bank of Bombay. It may be that there was some vague understanding between plaintiff and Chunilal that the former would assist the firm in settling with its creditors, but the evidence affords no sufficient reason for holding that the Rs. 3,400 were retained by the plaintiff, as alleged by Chunilal.

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Lastly, although the Rs. 10,000 fixed as the price of the property may have been somewhat favourable to the plaintiff, there is no reliable evidence which shows that it was so much below the real value as to cast doubt on the sale being a *bona fide* transaction between plaintiff and Chunilal.

Upon the whole of the evidence we see no reason to doubt that the sale to plaintiff was not a sham transaction, but a *bona fide* one in consideration of a debt still due and Rs. 3,400 in cash; and although, having regard to the circumstance of its having been entered into on the eve of the failure of the firm, it may be regarded as one by which plaintiff obtained an unfair preference over the general body of the firm's creditors, there are no circumstances in the case which show that plaintiff in entering into it was a party to any scheme by Chunilal to delay the creditors, and we have already said that we do not think the sale can be impeached by the defendant, on the ground of undue preference, in this suit. We must, therefore, reverse the decree of the Court below, and direct that plaintiff be put into possession of the property in question. But, under the special circumstances of the case, we shall order that parties pay their own costs throughout.

Decree reversed.

13 B. 442.

[442] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Nanabhai Haridas and Mr. Justice Birdwood.

JANARDANRAV AND OTHERS (*Plaintiffs*) v. THE SECRETARY OF STATE FOR INDIA (*Defendant*).^{*} [17th January, 1889.]

Jurisdiction—Act X of 1876, s. 4, cls. (f) and (k)—Inam Commissioner, investigation of a claim by, under Act XI of 1852 and decision thereon—Government resolutions setting aside the Commissioner's decisions—Such resolutions an adjudication—Claim for interest on mesne profits awarded by Government resolution.

In 1859 the plaintiffs' claim to hold a certain village as an *inam* village was investigated by the Inam Commissioner under Act XI of 1852 and rejected; and the plaintiffs were dispossessed of the village. In 1861 Government confirmed the Commissioner's decision on appeal by the plaintiffs.

Ultimately, however, in 1882, Government passed a resolution reversing its former decision, and subsequently passed a further resolution allowing the plaintiffs' claim to the village, and ordering the same to be restored to them. In 1885 the village was restored to the plaintiffs, and the arrears of revenue since 1859 were paid back to them. The plaintiffs then claimed interest on the arrears, and being refused the same sued to recover it. The District Judge was of opinion that s. 4, cl. (f) (2) of Act X of 1876 barred the cognizance of the suit by the Civil Court, but referred that question, under s. 13 of the Act, to the High Court.

Held, that the Civil Court had jurisdiction to try the suit. The resolutions of Government amounted to a distinct adjudication by competent officers that the land was exempt from payment of revenue, and was sufficient to give the Civil Courts jurisdiction over the plaintiff's claim.

^{*} Civil Reference, No. 12 of 1888.

(2) Section 4.—“Subject to the exceptions hereinafter appearing, no Civil Court shall exercise jurisdiction as to any of the following matters:—

“Clause (f): Claims against Government—to hold land wholly or partially free from payment of land revenue.”