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Present: Bertram C.J. and Ennis J.

NADARAJA *et al. v.* RAMALINGAM.

156—D. C. (Inty.) Jaffna, 12,056.

Evidence Ordinance, s. 92—Statement in deed that sum of Rs. 4,000 was consideration, and that it was paid—Action by vendor for recovering balance consideration, alleging that only Rs. 2,500 was paid—Oral evidence led to prove that actual consideration agreed upon was Rs. 2,500.

In a deed of transfer it was stated that the consideration was a sum of Rs. 4,000, and that it was paid. The vendor, alleging that only Rs. 2,500 was paid, sued the purchaser for the balance.

Held, that it was open to the purchaser to prove that the consideration for the transfer was Rs. 2,500 and not Rs. 4,000.

"The plaintiff comes into Court repudiating a statement with regard to the payment of the consideration, and if he is allowed to put that forward, he ought also to suffer the person whom he attacks to show the real nature of the transaction."

THE plaintiffs-appellants sued the defendant-respondent for the payment of a sum of Rs. 1,890, being the amount of balance sum and interest due from the defendant-respondent to the plaintiffs-appellants on account of the transfer of a piece of land by them to the defendant-respondent.

[1] *(1912) 16 N. L. R. 43.* [2] *(1913) 16 N. L. R. 306.*

The defendant-respondent filed answer denying that any sum of money was due from him to the plaintiffs-appellants, and stated that the actual consideration agreed upon was Rs. 2,500, and not Rs. 4,000 as recited in the transfer deed P 1.

The following issues were framed:—

(*a*) Is it open to the defendant to urge that the real consideration was not the sum mentioned in the transfer, but another amount?

(*b*) If it is, what was the consideration agreed upon by the parties?

The District Judge (Dr. P. E. Pieris) answered the first issue in the affirmative, and held that the consideration which the defendant agreed to pay was Rs. 2,500.

The plaintiffs appealed.

The deed in question was as follows:—

P 1.

Transfer No. 436.

To all to whom these presents shall come:
Nagamuttar Nadarasar and wife Nagaratnam, both of Vaddukkoddai West:

Send Greeting.

Whereas under and by virtue of a dowry deed dated December 10, 1907, and attested by, &c., under No. 6,822, the said Nagamuttar Nadarasar and wife Nagaratnam are seized and possessed of a piece of land called Mullaikkaddaiady, in extent 10 lachams varaku culture, with house, well, and other appurtenances, situated at Vannarponnai West, and more fully described in the schedule:

And whereas the said Nagamuttar Nadarasar and wife Nagaratnam have agreed for the absolute sale and assignment to Mangapperumal Sinnathamby Ramalingam of Vannarponnai West of the said premises intended to be hereby granted and conveyed free from encumbrances at the price or sum of Rs. 4,000:

Now know ye, and these presents witness, that the said Nagamuttar Nadarasar and wife Nagaratnam, both of Vaddukkoddai West, in pursuance of the said agreement, and in consideration of the sum of Rs. 4,000 paid by the said Mangapperumal Sinnatamby Ramalingam of Vannarponnai West (the receipt whereof, &c.), do hereby grant, convey, assign, transfer, set over, and assure unto the said Mangapperumal Sinnatamby Ramalingam, his heirs, &c., the said piece of land called Mullaikkaddaiady, in extent 10 lachams varaku culture, with house, well, and other appurtenances, situated at Vannarponnai West, more particularly described and set forth in the schedule to these presents, together with all buildings, privileges, easements, and other appurtenances whatsoever to the said premises belonging, or in anywise appertaining or usually held or enjoyed therewith or reputed to belong or be appurtenant thereto, and all the estate, right, title, &c.

Signed, witnessed, and attested June 3, 1914.

Hayley and *J. Joseph*, for the appellants.

A. St. V. Jayawardene and *Arulanandan*, for respondent.

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August 29, 1918. BERTRAM C.J.—

This case has been very fully and forcibly argued, but it practically comes to a question of fact and to the consideration of one question of law. Now, with regard to the question of fact, the learned District Judge has given a very explicit finding, and I do not see how we can be asked not to accept that finding. Apart from that, I agree with the finding.

[His Lordship dealt with the facts, and continued]:—

Now as to the law. The terms of section 92 of the Evidence Ordinance are clear enough, and, unless the defendant can show some good ground for escaping from the terms of the main part of that section, those terms are fatal to him. The principle of law as embodied in this section is that, where the terms of any grant or any other disposition of property have been reduced to the form of a document no evidence of any oral agreement or statement shall be admitted for the purpose of contradicting those terms; and in this case, undoubtedly, as it seems to me, the defendant comes forward and contradicts a term of the grant, the consideration. He says that the consideration was not Rs. 4,000 but Rs. 2,500, and the question is, on what principle in the face of that section, can he be allowed to do so?

Now, Mr. Jayawardene, in his very full and carefully presented argument, tried to justify his claim on a very general principle, which he deduced from certain Indian reports. He put before us a series of Indian reports and the principle which they appear to enunciate is that there is nothing in section 92 of the Evidence Ordinance to prevent a party from showing that the consideration of a document was different from the consideration therein described. Several of those cases simply refer to the previous cases in which that remark appears. They give no explanation of its principle. They appear to start from the case of *Hukumchand v. Hirālāl*, where no authority is cited for the principle laid down. Some of the cases cited by Mr. Jayawardene, in particular the case of *Indirjit v. Lal Chand*, [2] which was carried to the Privy Council, laid down, on the other hand, a perfectly intelligible principle, namely, that it is competent to a party to adduce evidence to show that arrangements were made by which the consideration stipulated for in the deed was to be discharged in a particular manner. Such evidence does not contradict the amount of the consideration. It proceeds on the basis that the amount of the consideration is truly stated. But it provides that the payment shall be made in particular instalments, or by means of a set-off, or in some other manner.

In regard to the first group of cases, starting from the case of *Hukumchand v. Hirālāl*, [1] they appear to proceed upon the assumption that a statement in a deed that the consideration for

[1] *(1876) I. L. R. 3 Bom. 159.* [2] *(1895) I. L. R. All. 168.*

the deed was a certain amount is not a term of the deed, but only a recital of a fact, of which consequently contradictory evidence may be given under the third explanation to section 91. I find myself entirely at variance with the assumption which seems to underlie those cases. It seems to me perfectly clear that a consideration for a grant is in the nature of things a term of the grant. In cases under the Statute of Frauds in England, where that statute requires a contract to appear in writing, it has always been held that the consideration is an essential part of the contract. (See *Taylor on Evidence, vol. 2, paragraph 1024,* and the cases cited under that paragraph.) It must equally be the case that, where a grant is made in pursuance of a contract, the consideration for the grant is one of its essential terms. I do not feel, therefore, that it is possible to give relief to the defendant from the effect of section 92 on the first ground suggested by Mr. Jayawardene.

But there is another and a stronger ground. A series of cases has been cited to us which enunciate an equitable doctrine, which, in my opinion, applies in this case. They originate from the principle laid down in the case of *Shah Mukhun Lall v. Baboo Sree Kishen Singh.*[1] That principle is stated as follows: "The rules of evidence, and the law of estoppel, forbid any addition to, or variation from, deeds or written contracts. The law, however, furnishes exceptions to its own salutary protection, one of which is, when one party for the advancement of justice is permitted to remove the blind which hides the real transaction; as, for instance, in cases of fraud, illegality, and redemption; in such cases the maxim applies, that a man cannot both affirm and disaffirm the same transaction, show its true nature for his own relief, and insist on its apparent character to prejudice his adversary." That case has been followed in India in *Himmat Sahai Sing v. Llewhellen,*[2] although it may be noted that that case might have been decided on another ground, as explained on page 491 of the report. It has also been followed in another case in India, viz., the case of *Baboo Meah v. Zumeeroodeen,*[3] referred to in *Bose's Digest, vol. 2, page 3921.* It has, moreover, been followed in our own Colony in the recent case of *Kiri Banda v. Marikar.*[4] That case proceeded expressly upon the principle which I have above referred to, and even if we disagreed with that case, we should be bound by it. I see, however, no reason to disagree with it. On the contrary, I regard with great satisfaction the fact that equitable means have been discovered which enable this Court to do justice in cases which might otherwise be covered by the rigorous terms of section 92, and where in equity these rigorous terms ought not to apply. What are the facts in this case? The plaintiff comes into Court and says, with reference to a particular sentence in the deed—a sentence which states the amount of

[1] *(1868) 12 Indian Appeals 157.*
[2] *(1885) I. L. R. 11 Cal. 486*
[3] *(1865) I. L. R. 5 Cal. 158.*
[4] *(1917) 20 N. L. R. 123.*

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the consideration, and also recites that the consideration has already been paid—" I wish to repudiate that statement that the consideration was paid, but I insist on holding the defendant to his statement of the amount, although he asserts that this amount, like the statement of the payment, was fictitious. " Clearly, on the face of it, that would be inequitable. Clearly also this is a position which the rule I have above referred to definitely covers. The question is, on what basis do we apply that rule in this Colony ? In my opinion the application of that rule in this Colony is justified by the first proviso to section 92. Under that proviso any fact may be proved which would entitle any person to any order relating thereto, such as fraud or certain other things therein enumerated. That proviso, therefore, indicates that if any party to the suit can plead any such ground as those enumerated he will be entitled to relief. What is the proviso intended to comprise ? Two answers may, in my opinion, be given to that question: one of a general nature, and the other of a particular nature.

In the first place, considering them generally, the circumstances there referred to (though some of them are what would be known in England as " common law defences ") are defences of an equitable nature. Fraud, intimidation, mistake of fact or law, are all defences of this nature. The words " such as " are an indication that the enumeration is not exhaustive. I am disposed to think that read in connection with section 100 they indicate an intention to comprise any recognized ground on which in a Court administering equitable principles a person in such a case would be entitled to relief. On this interpretation this proviso justifies the application in this Colony of the equitable principle to which I have referred above.

Moreover, the whole basis of the claim put forward by Mr. Hayley is an equitable one. It is one which the Courts of common law in England would not allow. The case he has cited to us, *Wilson v. Keating*,[1] clearly indicates that, under the English law, it was only equity which allowed any person to come into Court and contradict the terms of a deed by which he was bound, and to assert that the consideration which the deed alleged to have been paid was in fact not paid. The principle of English equity was that he who sought equity must do it. In this case the plaintiff comes into Court repudiating a statement with regard to the payment of the consideration, and if he is allowed to put that forward, he ought also to suffer the person whom he attacks to show the real nature of the transaction.

In the second place, apart from this general view of the effect of the priviso, accepting, as I do personally, the statement of the defendant that the document was wrongly drawn up without his knowledge, and that, when he drew attention to the fact he was put

[1] *(1859) 27 Beav. 121.*

off from taking any action by the assurance of the plaintiff that nothing would happen to him, because the receipt of the consideration was admitted in full, I am of opinion that this, though not perhaps actual fraud, was in the nature of fraud, and would be covered by the words " such as fraud " in the proviso. I think that those facts would have constituted a particular ground of equitable relief entitling the defendant to an order within the meaning of the proviso.

For these reasons, I am of opinion that, both on the facts and on the law, the defendant is entitled to a verdict, and that the appeal should be dismissed, with costs.

ENNIS J.—

I see no sufficient reason to interfere with the finding of fact of the learned District Judge, and on the question of law raised on the appeal, I agree with my Lord the Chief Justice.

Appeal dismissed.