

1927.

Present: Garvin J.

MEERA SAIBO v. AYAN SINNAVAN *et al.*

203—C. R. Batticaloa, 4,295.

*Paulian action—Consideration paid by alienee—Participating in fraud—Defence.*

In a Paulian action the fact that consideration was given by the alienee does not afford him a complete defence where he has participated in a scheme to defraud the creditors.

**A** PPEAL from a judgment of the Commissioner of Requests, Batticaloa.

*H. V. Perera*, for plaintiff, appellant.

*H. H. Bartholomeusz*, for defendants, respondent.

May 20, 1927. GARVIN J.—

This is an action under section 247 of the Civil Procedure Code to have certain allotments of land declared liable to be seized and sold in satisfaction of a judgment obtained by the plaintiff in case No. 4,271 of the Court of Requests of Batticaloa. During the pendency of that action the first defendant conveyed the premises to the second defendant. This transaction is impeached as an alienation in fraud of creditors.

It would seem that this plaintiff had also obtained judgment in another case against K. Sinniah and seized his interests in certain other allotments of lands. The second defendant claimed them by right of purchase, and that transaction was also impeached in an action No. 5,810 of the District Court of Batticaloa, which was pending when the case now under consideration came up for trial. The transactions impeached in these two cases are intimately connected, and all matters relating to the two alienations were fully gone into in this case by agreement of parties.

It is beyond question that the first defendant and Sinniah made these alienations with the intention of defrauding their creditor the plaintiff. It is said that they thought they were morally justified in so acting, because though they had no defence to the claims made by the plaintiff as endorsee of certain promissory notes inasmuch as the debt due by them on those notes had been paid to the original payee. This was doubtless the moving cause. This somewhat distorted view of the morality of the matter does not,

however, affect the question. Their purpose was to put this property beyond the reach of the plaintiff and thus defraud him of what has been held to be justly due to him.

It is also evident that if this transaction is to be permitted to stand, their purpose will be fully effectuated, as they will then have placed all their property out of the reach of the plaintiff.

The District Judge has found, and I think quite rightly, that the second defendant took these transfers with full knowledge of the claim of the plaintiff and well knowing that the object of the alienors was to defeat that claim if possible. "It is quite likely," says the Judge, "that second defendant thought he was morally justified in rendering whatever help he could to Sinnavan (first defendant) and Sinniah against the plaintiff, who was suing as endorsee of a discharged promissory note."

He has also found that these transfers, though they purport on the face of the deeds to be out-and-out conveyances on sale, were in fact made subject to the condition that the lands which formed the subject of these transfers were to be reconveyed by the second defendant to the first defendant and Sinniah when they discharged their debt to him. The first defendant and Sinniah remained in possession of their lands, and have continued to add to and improve the buildings standing thereon.

Despite this clear finding of the second defendant's participation in furtherance of the intention of the first defendant and Sinniah to defraud the plaintiff, the learned District Judge thought that inasmuch as the second defendant gave consideration for the transfers he obtained an indefeasible title. The transfers in question marked D 3 and D 4 purport to have been made in consideration of Rs. 600 and Rs. 993 respectively, making a total of Rs. 1,593. The plaintiff denied that any consideration was given. No money was paid at the time these transfers were executed. But the second defendant contended that he was a creditor to whom the first defendant and Sinniah owed a sum of Rs. 2,500. Upon the evidence, which is not very satisfactory, I do not think the amount due to the second defendant can fairly be assessed at more than Rs. 2,000. He says now that he took the conveyance in full settlement of the debt due to him, but this is not the consideration expressed on the deeds.

With full knowledge of the circumstances, and in furtherance of the scheme to defeat the claim of the plaintiff, this defendant took a transfer of property worth at least Rs. 2,900 when the debt due to him was approximately Rs. 2,000, upon the understanding that if at a later date the amount found due to him be paid the property was to be retransferred.

It may be that the first defendant and Sinniah will have difficulty in enforcing the agreement to reconvey should the second defendant

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refuse to do so. Those who enter into agreements of this nature do so with persons whom they believe they can trust to abide by them, and necessarily take the risk of possible loss in the event of their confidence proving to be misplaced. This consideration does not, however, alter the true nature of the transaction, which is a devise to defraud the plaintiff, in which the first defendant, Sinniah, and the second defendant jointly participated.

The fact that good consideration was given by the alienee is a circumstance which is entitled to great weight in considering whether or not there was good faith on the part of the alienee. But in the absence of express authority for that proposition I cannot agree that the mere fact that consideration was given by the alienee affords the alienee a complete defence to a Paulian action, even where it is plain that he has participated with the defrauding debtors in a scheme to defraud creditors. The second defendant is a creditor who in collusion with the defrauding debtors and in furtherance of that fraud took this conveyance of property by a transaction which was designed to defeat the claim of the plaintiff, while at the same time securing to him the repayment of his debt and to the defendants an opportunity of recovering their property on payment of the debt due to him alone.

He cannot claim to be in the position of a person who takes a transfer of property in good faith and for valuable consideration.

The plaintiff is entitled to the relief he claims. The appeal is allowed, with costs in both Courts.

*Appeal allowed.*

