

Present: Ennis J.

1922.

ANDRIS v. PUNCHIHAMY.

78—C. R. Tangalla, 10,052.

Transfer of property to defraud creditors—Action by heir of transferrer against transferee to recover same—Trust.

Where A transferred his property to B without consideration, and with the object of defrauding his creditors.

Held, that it is open to the heirs of A to sue B for the same.

THE facts appear from the judgment.

R. L. Pereira, for appellant.

Soertsz, for respondent.

August 18, 1922. ENNIS J.—

This was an action for declaration of title and ejectment. The land in dispute belonged to one Dines who, on December 8, 1916, executed a document which purported to be a deed of sale for consideration by which he conveyed the property to the plaintiff. The plaintiff brings this action stating that Dines' widow, the defendant, ousted him from possession. The defendant admitted the transfer, and stated that Dines had received no consideration, and that the deed was executed in trust. The learned Judge found that the deed had been executed by Dines in favour of the plaintiff, with the object of defrauding his creditors. The plaintiff was a party to this semi-fraudulent transaction. I see no reason to interfere with the finding of fact made by the learned District Judge that the defendant was in possession of the land since Dines' death, and that Dines himself had been in possession before the defendant and since the deed had been executed. I also see no reason to interfere with the finding of fact that no consideration passed on the deed. Counsel for the appellant cited the case of *Punchi Menika v. Dingiri Menika*,¹ where it was held that only a creditor who has been defrauded can maintain an action to set aside a deed. It is, however, to be observed that in that case an earlier case (*Mohamadu Marikar v. Ibrahim Naina*²) does not appear to have been cited. The case of *Mohamadu Marikar v. Ibrahim Naina* (*supra*) is remarkable in that it gives at length the reasons for applying the English Equitable Doctrine to soften the rigour of the Roman-Dutch law. The case held in effect that, strictly under the

¹ *Court of App. Cases*, p. 93.

² (1910) 13 N. L. R. 187.

1922.
ENNIS J.
Andris v.
Punchihamy

Roman-Dutch law, a person who conveys with an intention to defraud is not entitled to any relief; but that in Roman-Dutch law no person can enrich himself at the expense of another, and, by mingling the two doctrines, the English Equitable Doctrine was applied in that case. I would follow this principle, more especially in the present case where the plaintiff seeks to enrich himself at the expense of the defendant, who is in possession of the land.

I would accordingly dismiss the appeal, with costs.

Appeal dismissed.

