

The Official Assignee of Madras Vs. T.C. Ramaswamy Iyengar and anr.

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Court : Chennai

Decided On : Jul-23-1912

Reported in : (1912)23MLJ726

Appellant : The Official Assignee of Madras

Respondent : T.C. Ramaswamy Iyengar and anr.

Judgement :

Bakewell, J.

1. In November 1908 the 1st defendant presented his petition to the Insolvent Court and in his schedule stated that certain immoveable properties situate in the North Arcot district had been mortgaged to the 2nd defendant by a deed of simple mortgage dated '23rd August 1906. The Official Assignee, the plaintiff in this suit, alleges that this deed is fraudulent and that he is entitled to avoid it and in his plaint prays that the deed may be declared fraudulent and invalid and not binding on him and that the 2nd defendant may be decreed to deliver up the same duly cancelled.

2. The suit appears to be based upon Section 53 of the Transfer of Property Act 1882, which enables a creditor to avoid a transfer of immoveable property made with intent to defeat or delay the creditors of the transferor; such a transfer is not void but is voidable at the option of certain persons, that is to say, assuming that the plaintiff proves his case as regards all the world except the creditors of the 1st defendant and also as against them until they choose to exercise their option, the 2nd defendant possesses a mortgage interest in the land in question.

3. The plaintiff now seeks to exercise that option to avoid the 2nd defendant's mortgage and thus to clear the land which is now vested in the plaint of an existing incumbrance. The 6th issue, raises the question of the jurisdiction of this Court to entertain this 1 suit and by consent has been tried as a preliminary issue. Clause 11 of the Letters Patent of this Court declares that it shall have and exercise ordinary original civil jurisdiction within such local limits as may... be declared and prescribed 'and Clause 12 declares that' in the case of suits for land or other immoveable property such, land or property shall be situate within the local limits.'

4. The question for determination is therefore whether a suit to avoid an incumbrance upon land is a suit for land within the meaning of the Letters Patent.

5. It appears from the clauses of the Letters Patent which I have cited that the High Court in the exercise of its original civil jurisdiction is merely a local Court and the general principle of construction applicable to an enactment conferring such a jurisdiction is that it must clearly appear that a particular case falls within the

provisions of the enactment and that the jurisdiction should not be extended by implication. (See *Read v. Brown* (1888) 22 Q.B.D. 128 *Simpson v. Blues* (1872) L.R. 7 C.P. 290 *Payne v. Hogg* (1900) 2 Q.B. 43) The object of the legislature is in fact to distribute the work of administering the law among certain tribunals which should not encroach the one upon the other. For this reason it appears to me that the well known cases in the English Court which deal with the question to what extent a Court of Equity will, as against a person subject to its process, enforce rights relating to property situate outside the kingdom, have little application to the present question.

6. The general intention of the legislature as declared in Clause 12 of the Letters Patent and Section 16 of the Code of Civil Procedure, 1908, is that suits to establish or enforce any right to or interest in land should be brought in the Court within whose local jurisdiction, the land is situate see *Naluin Lakshmi Kantham v. Krishnasami Mudaliar* I.L.R. (1904) M. 157 and I think the burden is upon the plaintiff to show that the present suit is not a suit for land within the meaning of the Letters Patent.

7. A suit to get rid of an incumbrance on land appears to me a suit for land equally with a suit to enforce or obtain a charge upon land see *Naluin Lakshmi Kantham v. Krishnasami Mudaliar* I.L.R. (1904) M. 157, *Sundara Bai Sahiba v. Tirumal Row Sahib* I.L.R (1909) M. 131, since in each case the plaintiff claims an interest in the land and asks the Court to enforce his right; in the first case he asks for the entire interest in the land and in other cases for a partial interest only and the former is therefore more clearly a suit for the land.

8. For these reasons I am of opinion that the 6th issue should be answered in the negative and I dismiss the suit with costs of the 2nd defendant.

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