

Chidambara Pothan Vs. Poongavanam

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Court : Chennai

Decided On : Feb-19-1909

Reported in : 2Ind.Cas.813

Judge : Munro and ;Abdur Rahim, JJ.

Appellant : Chidambara Pothan

Respondent : Poongavanam

Judgement :

ORDER

1. The District Judge has clearly wrongly thrown the burden of proof upon the plaintiff. The burden in the circumstances was upon the defendant, the donee, to show that at the time the gift was made, the donor was in a position to pay his debts apart from the property, the subject of the gift. This is clear from paragraph 2 of Section 53 of the Transfer of Property Act. We must, therefore, ask the District Judge to find on the evidence on record in the light of these observations whether the gift to the defendant was made to defeat creditors. The finding should be submitted within 6 weeks and 7 days will be allowed for filing objections.

2. In compliance with the above order the lower Court submitted the following

FINDING. 1. The order of remand imposes the burden of proof on defendant, and the question is-whether the gift to her was made to defeat creditors.

2. The decree under execution was obtained in a pro-note of 1898, which renewed two prior notes in 1895 and 1896. It is urged for defendant that payments were made by the debtor on these notes in 1896, 1897, 1898, of above Rs. 300, by which the amount due was reduced to Rs. 500 at the date of the note sued on Exhibit (B). This does not prove anything as to the debtor's right to expect that he could discharge the last mentioned of 1899. There is then the evidence of plaintiff that on the- date of Exhibit (B) the debtor had a house of his own and the hypothecated house, i.e., that in suit. It is only clear that the debtor has disposed of it, since he said in evidence, I have no house of my own now. I have no immovable property now. I am living in the house of Ayya Pathan,' plaintiff's admission refers only to the date of his advance, not to the date of the gift to defendant.

3. Paragraph 6 of the plaint contains reference to some other properties which are not referred to in the evidence. Further, it was defendant's duty to produce details regarding them, if she wished to contend that the debtor could rely on them as available assets for the purpose of repayment of plaintiffs' debt; the plaint statement

only indicate that they were not so. On the other hand the relationship of defendant to the debtor and the easily asserted nature of the excuse suggested for the gift, the request of a dying father, are material. The debtor's evidence is, I have no means of paying the debt due to plaintiff 'and the absence of any explanation on his part as to his possession of means in 1899 supports plaintiff's case. Defendant s first witness went so far as to say that the debtor was customarily coming to the suit house.

4. There is no doubt, no evidence that there are creditors. But defendant has not proved that her donor was, at the date of the gift, in a position to pay his debt to plaintiff, apart from property gifted. The finding is, therefore, in plaintiff's favour that the gift was made to defeat creditors.

5. This second appeal coming on for final hearing after the return of the finding of the lower Court, the Court delivered the following

6. We accept the finding. The decree of the District Judge is reversed and the decree of the District Munsif restored with costs in this and the lower appellate Court.

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