



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshargarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshargarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

ABDUL SHUKOOR SAHEB V. ARJI PAPA RAO (DECEASED) AIR 1963 SC 1150

AUTHORED BY - SMITI JHUNJHUNWALA

21011401

BA.LLB. 2021 (B)

Introduction

This case came as an appeal to the Honourable Supreme Court of India after a certificate for fitness was granted by the High Court of Andhra Pradesh. It was heard by a three- judge bench. The Defendant firm, had two partners who later entered into a deed of dissolution as the firm was in large volumes of debt and was running into losses. Further, it was agreed between the partners that Abdul Shukoor would exit the partnership taking one property worth Rs. 20000 with him, while the suit tannery would become the sole property of the other “continuing partner”.¹ After the deed of dissolution was entered into, the other partner entered into an agreement for the sale of the suit property with the plaintiff, for a sum of Rs. 19000 and the deed of sale was later executed on May 20, 1949.² However, Abdul Shukoor also became an executant of the sale deed as his other partner thought it to be safer to have done so. On the execution of the sale deed, possession was with the plaintiff who claimed to have effected improvements thereafter.³ Meanwhile, Arji Papa Rao filed a suit for recovery of a sum of Rs. 12950 against the firm and its partners.⁴ “The plaintiff impleaded as parties to the suit besides the attaching decree-holder who was made the 1st defendant, the debtor-firm and the two partners as Defendants 2 to 4 respectively and the son of the 4th defendant who executed the sale deed as his agent under a power of attorney as the 5th defendant.”⁵ The plaintiff made the argument that they he had paid the full amount of consideration and “purchased the property bona fide and for it’s full value” and since he had purchased it, he had the right to enjoy the possession of the suit property and it no longer belonged to the partnership or any of the partners.⁶ The first defendant in this case was also the only contesting defendant. They argued that the “sale in favour of the plaintiff was either a sham and a

¹ Abdul Shukoor Saheb v. Arji Papa Rao AIR 1963 SC 1150 ¶ 2.

² Abdul Shukoor Saheb v. Arji Papa Rao AIR 1963 SC 1150 ¶ 2.

³ Abdul Shukoor Saheb v. Arji Papa Rao AIR 1963 SC 1150 ¶ 2.

⁴ Abdul Shukoor Saheb v. Arji Papa Rao AIR 1963 SC 1150 ¶ 3.

⁵ Abdul Shukoor Saheb v. Arji Papa Rao AIR 1963 SC 1150 ¶ 3.

⁶ Abdul Shukoor Saheb v. Arji Papa Rao AIR 1963 SC 1150 ¶ 4.

nominal transaction or in fraud of creditors of whom he was one.”⁷

Judgement and Reasoning

At the trial court level, the plaintiff’s claim and negated the contention that was raised by the first defendant that the “sale was fraudulent as intended to defeat or delay creditors under Section 53(1) of the Transfer of Property Act.”⁸ This judgement was then challenged at the High Court where the Judges reversed the decision of the Trial Judge. Thus, the main issues that arose were (1) Whether the suit sale deed was executed in fraud of creditors and therefore if it was binding or not? (2) Whether the sale deed was a genuine transaction? (3) Whether a suit under Section 53 of the Transfer of Property Act would be representative of all creditors and if Section 53 would continue to apply if the debtor had other property that could serve the interests of the creditors. The Court said that there was no doubt that the written statement was poorly drafted and the defendants did not raise two distinct pleas and instead “rolled both of them into a single plea raising the question “whether the plaintiff had title to the suit property and whether the claim order was liable to be set aside”.⁹

The Court said that, “Section 53 of the Transfer of Property Act assumes that there is a real transfer intended to pass title to the transferee but that the transfer is vitiated by fraud which renders it voidable. In the summary proceedings under Order 21 Rules 58 to 61, having regard to the terms of Rule 61, the Court is concerned only with the question as to whether the transferee is in possession of the property in his own right and not on behalf of the judgment-debtor.”¹⁰ So, when there is a real transfer, though it may be liable to be impeached on the grounds of fraud on creditors, if the transferee has entered into possession, he would “succeed in the summary proceedings, with the result that it is the defeated attaching creditor who would have to figure as a plaintiff.”¹¹ Thus, in every case, when a transfer is real but is liable to be set aside under Section 53(1) on the provisions of Order 21 of the Rules 58 to 61 of the Civil Procedure Code the transferee is said to be bound to succeed in the summary proceedings and the attaching decree-holder would have to figure as a plaintiff and the suit would be a representative suit. From this it is said that it follows that in no case can an attaching creditor who defends a suit to set aside a summary order

⁷ Abdul Shukoor Saheb v. Arji Papa Rao AIR 1963 SC 1150 ¶ 5.

⁸ Abdul Shukoor Saheb v. Arji Papa Rao AIR 1963 SC 1150 ¶ 5.

⁹ Abdul Shukoor Saheb v. Arji Papa Rao AIR 1963 SC 1150 ¶ 7.

¹⁰ Abdul Shukoor Saheb v. Arji Papa Rao AIR 1963 SC 1150 ¶ 24.

¹¹ Abdul Shukoor Saheb v. Arji Papa Rao AIR 1963 SC 1150 ¶ 24.

in his favour resist it on the plea of fraud under Section 53(1).¹² The judgement further said that this line of reasoning did not take into account certain possibilities and the alternative defence was not open in claim proceedings, however, if the same were erroneously entertained and an order was passed against a transferee, it would be an order which would have to be set aside by a suit by the defeated transferee and cannot be ignored.¹³ Thus it was held that Section 53(1) of the Transfer of Property Act rendered the transaction to be voidable “at the instance of the creditors if the transfer was effected with the particular intent specified and the statute does not prescribe any particular method of avoidance.”¹⁴ The Judges concluded that there was no substance in the point that anything in Section 53(1) originally, precluded that the sale in favour of the Plaintiff was vitiated by fraud. It was further urged that an amendment be made to the third paragraph of Section 53(1) to thereafter render transfers voidable under paragraph 1 of Section 53(1).¹⁵ Ultimately, the appeal failed and it was dismissed with costs.

Analysis

The first case that significantly affected the development of the laws on fraudulent transfers was the case of *Twyne v. Pierce*. In this case, to prevent the creditor from collecting, Pierce executed a deal with Twyne whereby he assigned all his personal property to Twyne. Pierce however, continued to be in possession of his own property. The creditor, obtained a Writ to execute on Pierce’s property. After this, the Creditor alleged that Pierce had made a fraudulent transfer of his property to Twyne, which implicated the Fraudulent Conveyances Act of 1571, also known as Chapter 5 of the Statute of 13 Elizabeth.¹⁶ This act declared fraudulent transfers to be a crime against Crown.

Section 53 of the Transfer of Property Act deals with fraudulent transfers. The main objective of this section is to protect the creditors’ interests. The Allahabad High Court, in the case of *Sarju Prasad v. Jai Karan*, cited a similar case and ultimately rejected the appeal. The court concluded that the previous case's findings were valid since they were based on pertinent evidence on record. The court deemed any contrary decision to be unreasonable or "perverse." As a result, the appeal

¹² Abdul Shukoor Saheb v. Arji Papa Rao AIR 1963 SC 1150 ¶ 24.

¹³ Abdul Shukoor Saheb v. Arji Papa Rao AIR 1963 SC 1150 ¶ 25.

¹⁴ Abdul Shukoor Saheb v. Arji Papa Rao AIR 1963 SC 1150 ¶ 28.

¹⁵ Abdul Shukoor Saheb v. Arji Papa Rao AIR 1963 SC 1150 ¶ 29.

¹⁶ Jay Adkisson, *Twyne's case and the most infamous flock of sheep in Anglo-american law* Forbes (2020), <https://www.forbes.com/sites/jayadkisson/2020/01/06/twynes-case-and-the-most-infamous-flock-of-sheep-in-anglo-american-law/?sh=e81ebac4227c> (last visited Apr 25, 2023).

was dismissed.¹⁷

The Law Commission of India, sanctioned by the government, has recommended certain changes to legislation based on this particular case. The case highlights the need for speedy justice and the avoidance of unnecessary litigation when immovable property is purchased. The Commission suggests that the sale deed for any purchased property must be registered, as failure to do so can lead to foul gameplay and unwanted disputes. These changes aim to improve the legal system by addressing the challenges faced by those who purchase immovable property. The Commission hopes that these recommendations will prevent further issues from arising and ensure that the legal process is efficient and just.¹⁸

Conclusion

In conclusion, the case of Abdul Shukoor Saheb v. Arji Papa Rao has been extremely important in determining the status of fraudulent transfer laws in India. While the Doctrine of Fraudulent Transfers originated and was developed in the realm of English legislation and was passed onto India, it has been extremely crucial in the development of property law in India and in ensuring the protection of the rights of a creditor in the Indian economic and legal spheres.

¹⁷ Sarju Prasad v. Jai Karan, 1998 SCC OnLine All 722

¹⁸ Need for Speedy Justice – Some Suggestions, law commission of India, 221 (18th ed. 2009).