

Muthu K.H.M.S.A.R. Ramaswamy Chetty - - - - *Appellant*

v.

Ramalingam Thamothersampillai - - - - *Respondent*

FROM

THE SUPREME COURT OF CEYLON.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 20TH JANUARY, 1927.

Present at the Hearing :

LORD PHILLIMORE.

LORD CARSON.

LORD DARLING.

SIR LANCELOT SANDERSON.

[*Delivered by* LORD PHILLIMORE.]

Their Lordships need not trouble counsel for the respondent.

This is a question of fact, and their Lordships see no reason to disagree with the conclusions of the Supreme Court. The burden in this case is in the first instance upon the plaintiff, and their Lordships do not think he has discharged that burden.

The question is whether the debtor when he executed the deed now attacked knew, or ought to have known, that he was in insolvent circumstances. It might possibly be put as a question whether he knew that he was embarking on risky speculations, and made the deed to protect himself against possible loss. Their Lordships do not gather that that is exactly the way in which counsel for the appellant put the point, but they will accept that also as a possible view. The Supreme Court says that this knowledge or expectation is not proved, and therefore that it was not necessary to consider whether the impugned deed did, in fact, pass for valuable consideration. In a sense that is true, but, on the

other hand, if the deed was not for valuable consideration, or if the deed did not show the true consideration, it would be a strong argument for supposing that, in fact, it was executed for the purpose of defeating creditors. Otherwise there would be no sense in going through the trouble and expense of preparing and executing such a document, and in their Lordships' view it is unfortunate that the Supreme Court did not go farther into that question. Their Lordships, however, have had the advantage of a very full, complete and valuable argument on the part of counsel for the appellant upon that subject, and every portion of the evidence has been read and scanned.

Their Lordships do not find the reasoning of the District Judge satisfactory. He did not accept the testimony of the witnesses; but he does not say that their demeanour was such as to lessen their credit, and his reason for not accepting their positive evidence seems inadequate. Their Lordships, on the other hand, can see no reason for not accepting that testimony or for not reconciling the documents which have been produced with the testimony thus given. No doubt there are some suspicious circumstances, and there are points to be made against the case for the respondent, but in their Lordships' opinion they are not sufficient.

In order to destroy the deed of February, 1921, it is necessary to go back earlier and destroy the deed D. 1 of January, 1920. To suppose that in January, 1920, the debtor either was in bad circumstances or expected to be in bad circumstances, or was likely to embark in such speculative transactions as to make it worth his while to execute a mortgage deed to a married woman, the respondent's sister, with whose husband he would have to reckon, whereby he created a fictitious debt of Rs. 5,000, is to ask their Lordships to believe something they are very unwilling to accept, and, upon the whole, having listened very carefully to the argument, their Lordships see, as has been already said, no sufficient reason for disturbing the judgment which has been given, and their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

MUTHU K.H.M.S.A.R. RAMASWAMY CHETTY

vs.

RAMALINGAM THAMOTHARAMPILLAI.

DELIVERED BY LORD PHILLIMORE.

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