Chumar Vs. Alima and ors.

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Court : Kerala

Decided On : Nov-12-1997

Reported in : AIR1998Ker139

Judge : T.V. Ramakrishnan and; K. Narayana Karup, JJ.

Acts : Transfer of Property Act, 1882 - Sections 53

Appeal No. : E.F.A. No. 12 of 1988

Appellant : Chumar

Respondent : Alima and ors.

Advocate for Def. : Dinesh R. Shenoy, Adv.

Advocate for Pet/Ap. : P.B. Krishnan, Adv.

Disposition : Appeal dismissed

Judgement :

Ramakrishnan, J.

1. Appellant is the decree holder in OS 32 of 1981 on the file of the Additional Sub Court, Parur. The appeal is against an order allowing a claim application, EA 750 of 1986, filed by the first respondent in the appeal. Respondents 2 and 3 are the judgment-debtors in the suit and counter petitioners 2 and 3 in EA 750 of 1986.

The first respondent-claimant in EA 750 of 1986, is the wife of the second respondent and mother of the third respondent.

2. The suit, OS 32 of 1981, was one filed by the appellant for recovery of amounts due to him with interest from respondents 2 and 3 based upon a transaction of loan dated 16-1-1978. The suit was decreed as prayed for on 20-10-1982. Appellant has filed EP 203 of 1985 on 23-9-1985 to execute the decree. In the Execution Petition, the property in question was attached on 1-10-1985 and the attachment was actually effected on 26-11-1985. The claim application disposed of by the impugned order was filed on 11-11-1986 claiming that the judgment-debtors have no right in the property and that the first respondent is the sole owner of the property on the basis of Ext. A1 assignment deed dated 25-5-1973.

3. In the claim application, first respondent has alleged that the property under attachment was assigned in her favour as per Ext. 'AI assignment deed for valid consideration and that she is in possession and enjoyment of the same. The house in the property belongs to her and she came to know about the attachment and proclamation for sale only when notice of sale was effected by affixture on the property. First respondent has specifically asserted that respondents 2 and 3 have no right or interest in the property subsisting on the date of attachment. Appellant resisted the claim application contending that the application is lacking in bona fides and is highly belated. It was further contended that Ext. Al sale deed is sham and nominal and is one executed without consideration. The property is even now in the possession of the judgment-debtors. The alleged transfer, in any event, is in fraud of the creditors and as such voidable. The averment in the claim petition that first respondent came to know about the attachment only when notice of sale was affixed on the property was also denied stating that the first respondent had occasion to know about the attachment even earlier. It was submitted that the above assertion is a mere assertion made with a view to file the application at a very belated stage of the execution proceedings to prolong and protract the proceedings. In the light of the contentions raised in the counter-affidavit appellant has prayed for dismissing the application finding that it is one filed belatedly without any bona fides and merit.

4. Except producing Exts. A1 to A3 and B1 to B4, parties have not adduced any oral evidence in support of their respective contentions. The Execution Court, on a consideration of the evidence available on record, has come to the conclusion that the first respondent-claimant has succeeded in establishing her title to the property and that the judgment-debtors had no title or interest in the property attached at the time of attachment. On the basis of the above findings, the attachment effected was raised as per the impugned order.

5. In the appeal, Sri P. B. Krishnan, learned Counsel for the appellant has contended that the finding of the Execution Court that the claimant is the owner of the property attached is illegal and unsustainable in law. While arriving at such a finding relying upon Exts. Al to A3, the learned Judge has totally omitted to consider the legal effect of Exts. B1 and B2 documents and the fact that Exts. A2 and A3 are tax receipts obtained respectively on 12-9-1.985, just a few days prior to the filing of the Execution Petition and on 12-11-1995, just after the filing of the Execution Petition. It was submitted that the learned Judge has totally misunderstood or omitted to understand the scope of Section 53 of the Transfer of Property Act, (for short 'the Act') as far as the rights of subsequent creditors are concerned. Even assuming that the appellant is only a subsequent creditor, the learned Judge ought to have found that in the light of Ext. Bl the appellant was entitled to avoid Ext. Al sale deed as a transfer effected with intent to defeat or delay the creditors of the judgment-debtors. It was also submitted that the learned Judge has failed to advert to the various facts and circumstances which would positively show that Ext. A1 assignment was one effected with intent to defeat or delay the creditors of the second respondent, one of the judgment-debtors in the suit. Ext. Al being a transaction entered into by the second respondent in favour of the first respondent at a time when he was indebted as evidenced by Ext. B1, the view taken by the learned Judge that it is not possible to say that Ext. Al was executed with the intention of delaying or obstructing the execution of the decree that may be passed in the suit is unsustainable in law. The mere fact that Ext.Al is a transaction anterior to the transaction between the appellant and the second respondent may not be a sufficient ground to reject the contention that Ext. Al transaction is a transaction voidable under Section 53 of the Act. Learned counsel has relied upon various facts and circumstances brought out in evidence through

the recitals in the documents produced on both sides to show that Ext. Al transaction is one entered into with the intention of defeating or delaying the creditors of the second respondent including subsequent creditors like the appellant.

6. As already indicated, Ext. Al is the sale deed executed in favour of the first respondent by the second respondent, her husband, on 25-5-1973. The consideration mentioned in the sale deed is Rs. 2,000/-. Ext. AI refers to Ext. B4 sale deed dated 3-10-1955 as per which the second respondent has obtained title to the property for a total consideration of Rs. 1,500/-. In Ext. Al there is a recital to the effect that the second respondent had obtained the property on assignment as per Ext, B4 for the benefit of the first respondent and utilising her funds and that she was in possession and enjoyment of the property effecting improvements thereon even before execution of Ext. Al. Exts. A2 and A3, as already noted, arc tax receipts in the name of the first respondents obtained in 1985 and 1986. They are obviously documents which came into existence in the year in which Execution Petition was filed by the appellant and thereafter. Ext. A1 dated 11-3-1971 is a Kurichoondi Panayadharam executed by the second respondent and two others in favour of a Chitty company known by the name Premier Hire-Purchase Company Limited on receipt of Rs. 22,000/- as prize amount for the purpose of securing payment of future instalment amounts as and when they become due without committing any default. Ext. B 2 dated 30-12-1974 is the release deed executed by the Company in favour of the second respondent and the other parties who have executed Ext. Bl in favour of the company. The recitals in Ext. B2 would show that the company released Ext. Bl Kurichoondi Panayadharam after receiving all the future subscription amounts paid by the second respondent without committing any default. Ext. B3 is the copy of Ext. Al. Ext. B4, as already noted is the copy of the sale deed in respect of the attached property standing in the name of the second respondent.

7. The facts and circumstances, as noted above, and brought on record through the pleadings and documentary evidence adduced in the case, are not in dispute. The endorsement made in the 'B diary' maintained in connection with the Execution Petition would show that counsel for the judgment-debtors has

submitted before the Execution Court on 24-6-1986 that the properties sought to be sold had already been sold under a registered document long prior to the attachment and that it was after rejecting the above objection raised by the judgment-debtors as not substantiated that sale was ordered to be held in execution of the decree as if the property belonged to the judgment-debtors. It was thereafter on 12-11-1986, EA 750 of 1986 was filed by the first respondent.

8. The main question to be considerered is whether Ext. Al sale deed is liable to be held as a transaction effected with intent to delay or defeat the creditors of the second respondent and as such laible to be avoided by the appellant under Section 53 of the Act in these proceedings. Certain legal principles relevant for deciding the issue can be treated as well settled. Thus, it has been held that a plea based on Section 53 of the Act can be raised by way of defence and if raised as a defence, there is no need to defend the suit or other proceedings in a representative capacity on behalf of all creditors of the judgment-debtors. It has further been held that a plea based on Section 53 of the Act to avoid a transfer by a debtor is available to a subsequent creditor also (See : Ithakku Abraham v. Kesavan Damodaran, 1987 (1) KLT 704, While dealing with the right of subsequent creditors to impeach voluntary conveyances executed by the creditors, learned author Kerr has observed thus :

'Where a voluntary conveyance has been made by a person 'indebted' any creditor who became such after the date of its execution (as well as any one of the original creditors) can maintain an action to have the settlement set aside under the Statute (13 Elizabeth C.5), so_long as any debt, due at the date of the settlement, remains unpaid at the time of the commencement of the action.'

(Kerr on 'Fraud and Mistake' - 7th Edn., p. 318)

The reason that a subsequent creditor is allowed to maintain such an action, merely on the ground of the settlor's indebtedness, is that, if a prior creditor sets aside the settlement, a subsequent creditor would be entitled to participate pro rata; or that he has an equity to participate and may bring his action to enforce that equity. (Jenkyn v. Gaughan, (1856) 3 Drew 419, followed in Freeman v. Pope, ((1870) LR 9). Learned author has further continued to discuss two more important

aspects of the matter thus :

'The point has never been expressly decided whether a subsequent creditor can maintain an action to set aside the conveyance, simply on the ground that it was voluntary, and that the grantor was then 'indebted' where all the debts due at the date of the conveyance have been paid before the commencement of the action. It is conceived that, in the absence of any fraudulent contrivance on the part of the grantor to pay off the existing creditors by creating fresh ones, such an action could not be maintained; because the equity of the subsequent creditor cannot be a higher one than that of a creditor at the date of the conveyance. ..... . .A voluntary conveyance is void under the statute, as against subsequent creditors of the grantor, if it was made by him with the express, or actual, intention of delaying, hindering, or defrauding his creditors thereby; whether the grantor was then in embarrassed circumstances or not; and whether or not any debt he then owed remains unpaid. Where the conveyance is not impeachable by reason of the grantor's indebtedness, merely at the time, it was made, the onus of proving the fraudulent intent is thrown on those who impeach the conveyance: for fraud is not to be presumed. The mere fact of subsequent indebtedness is not evidence of a fraudulent intent against subsequent creditors; though, as, has been seen, where a voluntary settlement is impeached on the ground of the settlor having become actually insolvent soon after the date of the settlement, it lies on him to show he was in a position to make the settlement. According to the more recent decisions on this question, pecuniary embarrassment of the grantor at the time when he executed the conveyance, or a then existing probability of such embarrassment in the future is generally speaking one, at least of the circumstances that are essential to enable the come to such conclusion.'

To more or less same effect are the statements of the law on the point contained in American Jurisprudence, 2nd Edn., Vol. 37. In paragraph 139 discussing the point under the heading 'subsequent creditors', it has been observed thus :

' It is not sufficient for a subsequent creditor to make out a case of merely constructive fraud, founded on such facts as lack of consideration or insolvency on the part of the transferor; he must establish fraud in fact or actual fraud, and he

must assume the burden of proof in this respect. . . . . A general fraudulent intent has been held insufficient, and a subsequent creditor has been permitted to set aside the conveyance only where it appeared that the intention to defraud was specifically aimed at subsequent creditors, or at least at the plaintiff.'

Story in his Equiry Jurisprudence, Vol. 1, Section 361 has thus summed up the law on the subject, in the words of Chancellor Kent:

'Fraud in a voluntary conveyance is an inference of law in so far as it concerns existing debts, but there is no such legal presumption as regards subsequent debts. There must be proof of positive fraud in fact, to vitiate a voluntary conveyance'. '

Similarly, May, in his standard work on 'Fraudulent Conveyance and Dispositions of Property', says :

'Where the settler was not indebted at the time, the onus of proving the fraud is thrown on those who impeach the settcment, for fraud is not to be presumed. The mere fact of subsequent indebtedness is not evidence of a fraudulent intent against subsequent creditors.'

The difference existing in the nature and content of the rights of existing creditors and subsequent creditors has been admirably brought out in the following passages of Tek Chand, J. in Md. Ishaq v. Md. Yusaf, AIR 1927 Lahore 420 at page 421 ;

'In cases where there are debts due at the time of a gratuitous transfer, it will be presumed, as has been pointed out by my learned brother, that the transfer was made with intent to defeat or delay the creditors. But where there are no debts due at the time and the transferr or runs into indebtedness subsequently, the presumption will be regulated by the peculiar circumstances of each particular case. If, for instance, the transfer was made to ward off the effects of a threatened litigation or in anticipation of the transferor embarking upon a commercial venture or on the eve of his going into trade, the intent to defeat or delay future creditors will be presumed. But in other circumstances the transaction will be presumed to

be bona fide and it will lie on the future creditors to prove that the transfer was made with an intent to defeat or delay them.'

Halsbury's Laws of England states the law on the subject thus :

'Although subsequent creditors have the same right to set aside an alienation made with intent to defraud them as creditors whose debts were due at the date of the alienation, they have a more difficult task than the latter class of creditors in proving a fraudulent intent on the part of the grantor in the case of a voluntary deed. In such cases, they must prove either an express i ntent to defraud creditors, that, immediately after the settlement a grantor had no sufficient means or reasonable expectation of being able to pay his then existing debts. In the absence of an express intent to defraud a voluntary deed will not be set aside at the instance of a subsequent creditos if all creditors existing at the date of the deed have been paid off.'

9. The above principles regulating the rights of existing creditors and subsequent creditors have been referred to and relied upon in the following decisions strongly relied upon by the learned Counsel for the appellant while arguing the case ;

(i) Md. Ishaq v. Md. Yusaf, AIR 1927 Lahore 420; (ii) Mt. Bibo v. Sampuran Singh, AIR 1936 Lahore 222; (in) Dist. Board, Bijnor v. Mohd. Abdul Salam, AIR 1947 All 383; (iv) Umar Sait v. Union of India, AIR 1965 Madras 395; (v) Ithakku Abraham v. Kesavan Damodaran, 1987 (1) KLT 704.

10. A careful analysis of the relevant principles discussed in the authoritative text books and decisions would clearly indicate that fraud in a voluntary conveyance will be presumed only in so far as it concerns existing debts and no such legal presumption will be available as regards the subsequent debts. In the case of subsequent debts there must be proof of positive fraud in fact, to vitiate a voluntary conveyance. The mere fact of subsequent indebtedness is not evidence of a fraudulent intent against subsequent creditors. It is only subject to the above qualification subsequent creditors can successfully impeach and avoid voluntary conveyance under Section 53 of the Act. Of course, while discharging the burden, a subsequent creditor impeaching the transfer may rely upon circumstantial

evidence also though no direct evidence is available for establishing fraud.

11. We may now turn to the several contentions advanced by the learned counsel on behalf of the appellant. The contention raised in the counter-affidavit that Ext. Al is a sham and nominal transaction and that the property was never conveyed at all and remained the property of the second respondent has not been established at all. It is relevant to note that such a contention may go even contrary to the contention raised by the appellant based upon Section 53 of the Act. If the contention of the appellant is that Ext. Al is a, sham and nominal transaction, Section 53 may not have any application (See : Parbhu Nath Prasad v. Sarju Prasad, AIR 1940 Allahabad 407. and Mahendra Mahto v. Suraj Prasad Ojha, AIR 1958 Patna 568. In faot, the challenge based on Section 53 involves the admission that the transfer is a real one.

12. With a view to take advantage of a very helpful presumption available to an existing creditor, learned counsel for the appellant has argued that at the time of execution of Ext. Al, second respondent was a debtor as evidenced by Ext. BI Kurichoondi Panayadharam and as such Ext. A1 should be deemed to be a transfer effected by a person indebted with intent to defeat or delay his creditors. As such, it is important to decide the question whether at the time of execution of Ext. Al, second respondent was having any debts or not.

13. As already referred to, Ext. B1 is a simple mortgage styled as Kurichoondi Panayadharam executed by the second respondent (one of the judgment-debtors) along with two others at the time of receiving prize amount of a kury subscribed to by the second respondent for the purpose of securing the amount to be paid in future by way of subscriptions in the said kury. According to learned Counsel for the appellant, on the execution of Ext. BI itself, second respondent has actually incurred a debt to the extent of Rs. 22,000/- and the debt was in existence and it was during the existence of such debt that Ext. A1 was executed. According to the learned Counsel, subsequent discharge of the debt as per Ext. B2 may not affect the legal position as far as the transfer effected during the existence of the debt. In this connection, learned Counsel for the appellant has strongly relied upon a Full Bench decision of this Court reported in P. K. Achulhan v. State Bank of

Travancore, AIR 1975 Kerala 47 (FB), wherein this Court has-held that 'a subscriber, on receipt of a prize amount from the stake-holder, truly and really becomes a debtor for the prize amount paid to him.' It was submitted that the statement of law contained in the above Full Bench decision even now holds good as far as the point is concerned.

14. Beforedealing with the exact nature of the liability incurred by the second respondent on the execution of Ext. Bl, we may relevantly point out that Ext. B2 release deed dated 30-12-1974 executed by the Premier Hire-Purchase Company, the stake-holder, would show that the entire amount due by way of future subscriptions from the second respondent was actually paid by him without committing any default and that the company has released the properties mortgaged to them as per Ext. Bl. Recitals in Ex. Bl would clearly show that it was only a document executed for the purpose of securing payment of amounts due to the company by way of future instalments due to the company from the second respondent. The liability incurred under the document was only to pay the subscription amounts as and when they become due as per the kury variyola without committing default. If no default is committed, the executants' or subscribers liability is only to pay the amounts due to each instalment as and when it falls due. This Court has, in a Full Bench decision of Five Judges reported in Janardhana Mallan v. Gangadharan, AIR 1983 Kerala 178 (FB), held that 'on entering into the chitty agreement, a debt is not incurred by the subscriber for the amount of all the future instalments and in respect of such amount there is no debtor-creditor relationship. The chitty variyola only embodies a promise to pay all future dues. That is not a promise to repay an existing debt but to pay in discharge of a contractual obligation. As such, neither the prizing of the chitty nor the execution of the security bond would give rise to a debt, for, the prize amount is not received as a loan, but of right by virtue of the terms of the contract between the parties. Therefore, no debt due to the foreman arises by reason of the receipt of the prize amount or of the execution of the security bond for securing future subscriptions.' It is also relevant to note that the above Full Bench decision has specifically overruled the earlier Full Bench decision of Three Judges reported in P.K. Achulhan's case, AIR 1975 Ker 47. In this connection, it is relevant to note the following observations of the Supreme Court in M/s. Shriram Chits and Investment

(P) Ltd. v. Union of India, AIR 1993 SC 2063 : (1993 AIR SCW 2443), wherein the Supreme Court had occasion to refer to both the decisions and to adopt the principle laid down in Janardhana Mallan's case AIR 1983 Ker 178, as the correct principle to be followed even after noticing that the Supreme Court has referred to with approval P. K. Achuthan's case (supra) in K.P. Subharama Sastri v. K. S. Raghavan, AIR 1987 SC 1257 :

'It will be noticed that the later Full Bench decision of the Kerala High Court in Janardhana Mallan, AIR 1983 Ker 178 (supra) was not brought to the notice of this Court and the Court was referred to the overruled decision of the Kerala High Court. The fact remains that the question involved before us as to the true nature of transaction for the purpose of finding out of the relevant entry in the Constitution into which it may fall, was not involved in that case.

It appears to us, but for the discordant note struck by the other Full Bench of the Kerala High Court in the aforesaid case of P.K. Achuthan, AIR 1975 Ker 47 (supra), the consistent view of all the High Courts has been that there is no relationship of debtor and creditor for the purpose of it being treated as a money lending transaction.'

15. Dealing with the above matter, we have to further note that the Supreme Court has reversed the Full Bench decision of Five Judges in Janardhana Mallan's case (supra) without considering the correctness of the above point and leaving open the said question and has remanded the appeal for fresh consideration. We may also relevantly note here itself that after the reversal of Janardhana Mallan's case (supra) by the Supreme Court, two learned Judges of this Court have taken the view that the view taken by the Larger Bench is not good law in Mar Apparem Co. Ltd. v. Narendranath, 1990(1) KLT 866 and John v. Oreintal Kuries Ltd., 1994 (2) KLT 353. It is relevant to note further that while dealing with the appeal remanded by the Supreme Court, another Division Bench, to which one of us (Ramakrishnan, J.) is a party, the point was not decided finally, as it was found to be not necessary for deciding the appeal. Interestingly, it is to be noted that the decision in M/s Shriram Chits & Investment (P) Ltd. v. Union of India. AIR 1993 SC 2 063 was not brought to the notice of the learned Judges while dealing with the decisions

reported in Mar Appraem Co. Ltd.'s case (supra) and John's case (supra) or before the Division Bench while dealing with the appeal after remand. In view of the fact that the view expressed by the Larger Bench regarding the nature of the liability incurred by a prized subscriber on the execution of achitty security bond has been fully accepted by the Supreme Court in M/s. Shriram Chits and Investments (P) Ltd.'s case (supra), describing Achuthan Nair's case AIR 1975 Kerala 47 as decision striking a discordant note, we feel that we will be justified in proceeding on the basis that the view expressed by the Larger Bench is the correct view and is good law in spite of the, earlier Full Bench view which is contrary to it and in spite of its acceptance by the Supreme Court in K.P. Subbarama Sastri v. K.S. Raghavan, AIR 1987 SC 1257.

16. In the Jight of the above finding that the liability arising out of Ext. Bl Kurichoondi Panchayadharam cannot be treated as a 'debt', it has to be further held that at the time of execution of Ext. AI, there was no debt due from the second respondent. As a necessary legal consequence, it has also to be held that appellant, while challenging Ext. Al transaction on the basis of Section 53 of the Act, cannot rely upon any legal presumption that it is a transfer effected with intent to defeat or delay the creditors and has to prove as a matter of fact that the transfer was one entered into fraudulently with the intention of delaying ordefeating the creditors. In other words, the Court is bound to proceed on the basis that Ext. A1 is a valid assignment and that the burden of proving that it is a transaction hit by the provisions in Section 53 is on the appellant. Taking note of the above legal position, the learned counsel has alternatively contended that the appellant has satisfactorily established that it is an assignment entered into fraudulently and as such as he is entitled to get it avoided under Section 53 of the Act. In this connection, it was submitted forcefully that there are ever so many circumstances present in the case which have always been looked upon as 'badges of fraud'. Learned counsel has referred to Twyne's case (1602) 3 Rep 80 and the nine circumstances pointed out in that decision as 'badges of fraud' which has been quoted by Kerr in his book 'Fraud and Mistake. The nine badges of fraud are thus :

'In Twyne's case, the following are mentioned as marks or badges of fraud under the statute: (I) The generality of the gift - that is, the inclusion therein of all the

grantor's property, (2) the . grantor's continuance in possession; (3) Secrecy of the gift; (4) that it was made pcndente lite; (5) that there was a trust between the parties for the grantor's benefit; (6) unusual statements in the conveyance as to its having been made honestly, truly, and bona tide. To these may be added others; (7) as that the deed give the grantor generala power of revoking the conveyance; (8) that it contains false recitals, or false statements as to the consideration, etc.; (9) or that the consideration is grossly inadequate.'

It was submitted that almost all the above badges of fraud except one or two are present in this case and as such it has to be held that the appellant has discharged the burden of showing the transaction to be a fraudulent one intended to delay or defeat the creditors and as such Ext. A1 is liable to be declared as void against him.

17. Thus, it was submitted that Ext. B2 release deed obtained by the second respondent would show that in spite of Ext. A1 sale deed, the transferor had continued in possession. Such continuation of the vendor in possession, is one of the badges of fraud, It was alleged that alienation was kept secret till the filing of the claim and that again is a 'badge of fraud'. The statement in the concluding portion of Ext. AI to the effect that

'Vernacular matter is omitted.'

is an unusual statement. The document also contains a false statement that the property assigned is one acquired by him for the benefit of the claimant-first respondent utilising the funds belonging to her and she was in possession and enjoyment of the property even prior to the assignment and was effecting improvements therein. It was submitted that the above statement is false in view of the recitals in Ext. B4 which would go to show that the property was acquired by the second respondent utilising money provided by his father and not by the first respondent-claimant. Further, it was submitted that the consideration of Rs. 2,000/- mentioned in Ext. A1 isgrossly inadequate taking note of the fact that the property was one purchased in 1955 for a consideration of Rs. 1,500/-. All the above circumstances, according to the learned counsel, are 'badges of fraud' conclusively establishing the fraudulent nature of the alienation.

18. On a careful consideration of the entire facts and circumstances of the case, we do not find any reasons to hold any of the above circumstances as 'badges of fraud' and to hold that Ext. A 1 is an alienation liable to be declared void under Section 53 of the Act. The fact that second respondent along with the two guarantors who have executed Ext. A1 has taken a release deed on payment of all instalment amounts due to the Kuri company cannot be taken as a circumstance to show that second respondent had continued in possession of the property even after Ext. Al. This is especially so in view of the recitals in Ext. A1 that even before its execution the claimant was in possession and enjoyment of the property. There is no other circumstance or evidentiary material on record to show that second respondent was in actual possession of the property even after Ext. A1. Ext. A1 is a registered sale deed and there is no reason to hold that the fact of alienation was kept as a secret till the date of filing of the claim application. In fact, on receipt of notice in the Execution Petition, both the Judgment-debtors have informed the Court of the alienation of the property sought to be attached and proceeded with. The statement in the concluding portion of Ext. Al cannot be considered as an unsual statement at all. On the other hand, it can only be considered as a common or usual assurance regarding the unencumbered nature of the property alienated and warranty against any encumbrance and consequential loss. The further recital that the property in question was acquired as per Ext. B4 utilising the funds supplied by the first respondent cannot be found to be a false recital for the only reason that in Ext. B4 the consideration is stated to have been received by the vendor therein from the father of the second respondent and not from the first respondent. The fact that the vendor in Ext. B4 has received the consideration from the father of the second respondent would not be a safe or clinching circumstance to hold that the consideration for purchase of the property as per Ext. B4 has not proceeded from the first respondent. At best, it can only be circumstances creating a doubt regarding the genuineness of the recitals in Ext. Al. There is also no force in the submission that Rs. 2,000/- mentioned is agrossly inadequate consideration for the sale when compared to the consideration of Rs. 1,500/-fixed in Ext. B4. Prima facie, there is no reason to hold that the amount is grossly inadequate in the light of the recitals in Ext. A1 to the effect that the vendor was only having a nominal interest in the property and the property was acquired

even as per Ext. B4 for and on behalf of the first respondent and she was in possession and enjoyment of the property. No other evidence to establish that the property was worth much more than Rs. 2,000/- was adduced in the case. As such, we do not find any justification to hold any of the circumstances as 'badges of fraud' as contended by the learned counsel for the appellant. Therefore, the appellant is not entitled to get any relief on the basis that Ext. A1 has been proved to be a fraudulent transfer.

19. Lastly, learned counsel for the appellant has submitted that it is a case where the learned Judge has not considered any of the points arising for consideration in the proper perspective and as such, in the interest of justice, the case is liable to he remanded for fresh disposal in accordance with law after giving the parties opportunity to adduce fresh evidence, if any. in the matter. We do not find any justification to accede to the above request of the learned counsel for the appellant in the facts and circumstances of the case. Ext. Al was of the year 1973. Second respondent has been described in all the documents as an agriculturist. The borrowal was in the year 1978, five years after the execution of Ext. A1. We have already found that there was no 'debt' existing on the date of Ext. Al. Even assuming that there was any debt, it was discharged in 1974 as per Ext. B2, long before the borrowal from the appellant. Facts and circumstances brought out in evidence would indicate that the transaction was one executed in the normal course. There is also no case for the appellant that he was denied a reasonable opportunity to adduce all available evidence or that he had found out any clinching evidence to establish his case that the transaction is one entered into fraudulently with the intention to defeat or delay the creditors.

20. Before we conclude, we would record our appreciation of the exhaustive manner in which Sri P.B. Krishnan and Sri Dinesh R. Shenoy, learned counsel for they parties, have argued the points arising for consideration in this case.

In the light of the above discussion, we do not find any merit in the appeal. Appeal is accordingly dismissed. No costs.