

Present : Fisher C.J. and Driberg J.

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PUNCHI BANDA v. PERERA *et al.*

323—D. C. Kurunegala, 12,008.

Paulian action—Deed declared void—Effect of declaration—Title of transferee.

The decree in a Paulian action makes a fraudulent deed void only so far as it is necessary to make the property available for execution.

The title to so much of the property as is not sold in execution remains in the transferee.

APPEAL from a judgment of the District Judge of Kurunegala.

This was an action for declaration of title to land. T. M. Banda, who was entitled to certain lands, sold a half share of these to the added defendant (*i.e.*, third defendant) in 1921, who sold it to the first defendant.

T. M. Banda sold the balance half share on D5 of September 19, 1922, to the added defendant and one Ran Banda.

A judgment-creditor of T. M. Banda obtained on July 15, 1926, a decree in Court of Requests, Kurunegala, 1,634, in a combined 247 and Paulian action by which D5 was declared void. Thereupon the added defendant paid off the debt of the creditor and obtained an assignment of the decree in his favour by D3 of August 3, 1926. On P2 of August 27, 1926, T. M. Banda again sold his half share to the plaintiff, who claimed declaration of title to it.

Weerasooria, for plaintiff, appellants.—Deed D5, that is the transfer to the added defendant, was declared null and void in Court of Requests, Kurunegala, 1,634, to which T. M. Banda and added defendant were both parties. Title, therefore, reverted in T. M. Banda, who later sold it to the plaintiff. The added defendant as assignee of the decree is only entitled to be paid the amount due upon the decree.

Rajapakse, for added defendant (third defendant).—The effect of the decree in the combined 247 and Paulian action is to benefit the judgment-creditor only. It is a judgment *in personam* and not *in rem*. (*Voet, XLII. 8* (De Vos' translation, pp. 1 and 2).) The transfer is not declared null and void for all purposes but void as against the judgment-creditor only for the purpose of making the subject-matter of the transfer available for the purpose of executing

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the decree (*Gunawardene v. Bilindahamy*¹). Once the creditors debt is satisfied by the transferee (added defendant) the taint attaching to the transfer disappears. The decree in the Paulian action is against T. M. Banda (the debtor). He cannot convert a judgment against him to his own benefit and fraudulently retransfer the lands to another. Moreover, the added defendant was not a party by himself in the Paulian action. He was made a defendant as guardian *ad litem* to Ran Banda.

Counsel also cited *Burge, pp. 605, &c.*

Navaratnam, for first defendant, respondent.

December 4, 1928. FISHER C.J.—

The plaintiff instituted this action for declaration of title to an undivided half share of certain lands and the learned Judge dismissed the action on the ground that the plaintiff had no title to the land. The plaintiff claims on a deed executed by one Tennekoon Banda dated August 27, 1926. By a deed dated September 19, 1922, Tennekoon Banda had transferred a half share of the said lands to his son Ran Banda and his son-in-law, the third defendant to the action. It is that half share to which the plaintiff claims to be entitled. By a decree of the Court of Requests of Kurunegala dated July 15, 1926, in an action under section 247 of the Civil Procedure Code combined with a Paulian action that deed was declared to be void. The only question is whether Tennekoon Banda had power to transfer the property to the plaintiff. The law as to the effect of a decree in an action such as that referred to is as stated by de Sampayo J. in the case of *Gunawardene v. Bilindahamy*.¹ In giving judgment in that case the learned Judge says: "A fraudulent deed is not annulled by that action, but it is only declared void so far as it is necessary to make the property available for execution." If such a decree had the force and effect contended for in this case by the appellants, any property dealt with by the deed not sold in execution would revert in the person who conveyed it. We must have regard to the purpose for which a deed is declared in such an action to be void and limit the operation of the declaration accordingly. In my opinion the title to so much of the property as is not required to be sold in execution remains in the transferee in the deed or his representatives.

For these reasons I think the judgment of the learned Judge is right and the appeal must be dismissed with costs.

DRIEBERG J.—

I agree with the order proposed by my Lord the Chief Justice.

This action is a futile and unnecessary one. The only matter in dispute now is the one-fourth share which Tikiri Banda transferred to Ran Banda by deed D5.

¹ *I.C. W. R. 95.*

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The effect of the decree in the combined Paulian action and 247 action brought by the decree-holder in Court of Requests, Kurunegala, No. 1,634, is to make the one-fourth share available in execution to the plaintiff in the action. It has been decreed void, but, as has been pointed out, void as against the creditors only. It cannot re-vest title in Tennakoon Banda so as to enable him to alienate it to the prejudice of Ran Banda, and there is the further consideration that Ran Banda was up to the time of the action at any rate a minor.

There is another circumstance which must not be lost sight of, and that is that the added defendant, whose one-fourth share under the same deed D5 was not affected by the decree, has taken an assignment of the decree-holder's rights by D3 of August 3, 1926, and may yet execute it and sell the interests of Ran Banda. But so far as this action is concerned, the plaintiff is seeking to vindicate title to a one-fourth share which belonged to Ran Banda and which he claims as having re-vested in Tennakoon Banda as a result of the decree in Court of Requests, Kurunegala, No. 1,634. This is a matter which can be considered to any useful purpose only in an action to which Ran Banda is a party.

The first defendant is a nominal party to these proceedings because his half share is admitted by all parties. The one-fourth share of Ran Banda which the appellant claims is not claimed by the added defendant, and the learned Judge did rightly in dismissing the action with costs.

Appeal dismissed.