Maharaja Manindra Chandra Nandy Vs Lalmohun Roy and Others

Court: Calcutta High Court

Date of Decision: Jan. 8, 1929

Citation: 120 Ind. Cas. 577

Hon'ble Judges: George Claus Rankin, C.J; Philip Lindsay Buckland, J

Bench: Division Bench

Judgement

George Claus Rankin, C.J.
This was a suit by the trustees of the deed of arrangement for the benefit of the creditors which was executed

by defendants Nos. 1 and 2 on the 1st April, 1921 and in connection with which an agreement was executed one or two days before between

certain creditors and the trustee. The proceedings began by way of originating summons taken out by the trustees of the deed against the debtors

only. That originating summons was taken out in July 1924. By an order made in the matter, on the 18th December, 1924, the plaint presented

together with the originating summons under the Rules of the High Court as they stood before 1926, was directed to be treated as a plaint in the

ordinary sense. When that action came on for disposal, it was ordered, on the 9th July, 1925, that it be adjourned to enable the plaintiff to implead

various mortgagees. Under this order, the plaintiff impleaded first of all certain persons who had mortgages upon the properties comprised in the

deed of arrangement, which were prior to the title granted to the trustees by the deed of arrangement. In addition to such mortgagees the present

appellant, the Maharaja of Cossimbazar, who is a relative of the debtors, was impleaded as a defendant, by reason that, on the 10th December,

1923, the debtors had executed in his favour a mortgage by which they purported to assign to him the properties which they had previously

assigned to the trustees for creditors by the deed of 1st April, 1921. The case was tried before my learned brother Mr. Justice Pearson and this is

an appeal from his decree.

2. It appears that it was contended before the learned Judge, first--that the conveyance of the properties effected by the deed of trust of 1st April,

1921, was invalid. In support of this contention various reasons were assigned. It was contended that the conveyance was fraudulent. It was

contended that it intended to be a conveyance for the benefit of certain creditors who had executed the agreement, and that some of these

creditors not having executed or assented the conveyance never took effect. It was contended further that by reason of the fact of certain creditors

having sued or threatened to sue the debtors, or, in one case having taken payment contrary to the terms of the deed from the debtors the deed of

trust was null and void.

3. The Maharaja--the present appellant--had a further contention which he submitted to the learned Judge. He said that at the time when the deed

of trust was executed the trustees had not only permitted the debtors to remain in possession of the properties but had failed to take the precaution

to get possession of the title deeds. This question refers to properties not within the original jurisdiction of the High Court. It was said that the

debtors never disclosed to the Maharaja the existence of the deed of trust for the benefit of creditors, that the Maharaja had no notice whatever of

that deed, that he took on the faith of the fact that the debtors were in possession not only of the properties but of the title-deeds and that,

therefore, in any case his claim under the mortgage could not be postponed in favour of the trustees under the deed of arrangement.

4. The facts of the case are reasonably clear. The debtors had various zemindary properties certain Calcutta houses which had been mortgaged

and certain businesses and prior to the time when the deed of arrangement was entered into they were financially embarrassed. They have indeed

from time to time and in circumstances of urgency been borrowing money from their relative--the Maharaja. It would appear that they had

borrowed in January, 1921, over half a lac of rupees and it is clear enough that the circumstance of their embarrassment did come to the notice of

the Maharaja. They held a meeting in March, 1921, of their creditors. The deed of the 1st April, 1921, purports to be a conveyance to the trustees

of all the properties comprised in the deed and there were elaborate provisions contained in that deed as to the terms upon which these debtors

were assigning their properties for the benefit of the creditors.

5. The scheme of the deed of arrangement was that the creditors would give nine months'' time to the debtors for payment of the debts, that the

debtors were to keep up the necessary payments on the properties in the meantime and receive and realise the rents and profits, that if at the end

of that time the debts were not discharged the creditors would be at liberty to take possession and realise their security, and that when the

creditors had realised their security the debtors were to be liable to pay the whole of the balance. The deed provided that this was to be done

within one month after the completion of the sale by the trustees.

6. It does not appear that the property comprised in the deed was the whole of the debtors'' property, nor does it appear that the amount left out

was insignificant. It was, if not large, at all event substantial. It does not appear either that all the creditors were originally intended to be parties to

this arrangement. The appellant Maharaja was one of the creditors who were not mentioned and there appear to have been other creditors who

were left out. The agreement which was executed by many of the creditors mentioned, though not by all of them was an agreement whereby the

creditors on their part agreed with the trustees that a proper deed of arrangement should be entered into.

7. That was a scheme which was accepted by many creditors. There can be no doubt at all that it was made known to and assented to by many of

the persons who were intended to be beneficiaries of the deed. Not only so, but it appears that the debtors did get first of all the nine months which

they were stipulating for. Not only is that the case, but the debtors proceeded at their own hand to make contracts for the sale of their properties

and they carried out those contracts by executing conveyances, the trustees knowing that they were engaged in so doing and the trustees

afterwards curing the defect in their title by executing a release of the rights of the trustees and so getting the obstacle to title created by the deed of

arrangement cleared away. The nine months were extended from time to time by the trustees. It was extended first of all to the end of the year

1922, and then again by further extension, at the request of the debtors contained in the correspondence exhibited, it was extended to the end of

the year 1923.

8. It was when this last extension was about to come to an end that on the 10th December, 1923, the debtors purported to convey all the

properties all over again to the Maharaja. The Maharaja''s mortgage, like the deed of arrangement, comprised some three Calcutta properties and

a great many mofussil properties. The three Calcutta properties were at all material times in this position that they were mortgaged to prior

encumbrancers and in December, 1923, when the Maharaja''s mortgage was executed the debtors were not in possession of those properties at

all, still less of the title deeds. Those properties were in possession of the Receiver in mortgage suits to enforce the prior encumbrances. In the end,

those mortgage suits succeeded and the properties were sold and the claim of the mortgagees exceeded the amount that was provided by the

security. It is not in evidence but it was stated by Sir Benode Mitter at the bar and not denied by the Advocate-General on behalf of the trustees

that a personal judgment in favour of the mortgagees and against the debtors had been passed in the mortgage suit. All that the Advocate-General

says upon that point is that the accounts of the Receiver have not been finally adjusted and that there may be some room for dispute about small

sums of money in respect of these.

9. At the time when the Maharaja took his mortgage, so far as the Calcutta properties are concerned, there is no case to be made to the effect that

he was misled or put off his guard by reason of the fact that he found the mortgagors in possession of the land or in possession of the title deeds.

The mortgage to the Maharaja is of this character: It appears that having lent, as I have already stated, a substantial sum of money to the debtors

before they had entered into the deed of 1st April, 1921, the Maharaja throughout 1921 in April, June, July, September, and October was making

advances to the debtors of substantial if not very large amounts. In November, 1921, he claims to have lent no less than Rs. 68,000 more. In 1922

in the month of September he claims to have lent them Rs. 2,0,000. On the 28th February, 1923, he claims to have lent them no less than Rs.

2,30,000 and he says, though there is nothing in support of this save his own evidence, that it was on that occasion that he asked for a mortgage

and was promised that a mortgage would be given. The mortgage, in fact, was not given till the 10th December of that year and that mortgage

purports to convey all these properties without discriminating in any way as to which of these properties were unencumbered and which of these

properties were already encumbered.

10. The learned Judge has dealt with both the branches of the case. He has found that the deed of arrangement of April, 1921, is a good and valid

deed. On the question whether the Maharaja has proved that in the case of the mofussil properties he was misled or put off his guard by negligence

of the trustees in not getting possession of the title-deeds, whether he has proved that in fact in December, 1923, the debtors were allowed to

retain the title deeds, whether he made satisfactory enquiries so as to explain this circumstance that this registered deed affecting the Calcutta and

mofussil properties which was executed by his own relatives never came to his notice, on these points the learned Judge has found in favour of the

trustees of the deed. He has not been satisfied with the evidence of the Maharaja so as to postpone the trustees of the deed to the Maharaja''s

mortgage,

11. There are several questions of jurisdiction which were raised in one form or another before the learned Judge at the trial. So far as regards

those questions which were raised, the learned Judge has rejected the objection that he had no jurisdiction and, in my opinion, there is nothing to

be said against his ruling upon those points.

12. In this appeal brought by the Maharaja the first point taken is a point of jurisdiction which was not presented to the learned Judge at all and

that is the point that this is a suit for land part only of which is within the jurisdiction of this High. Court on its Original Side, and that no leave has

been obtained under Clause 12 of the Letters Patent so as to give this Court jurisdiction in respect of any of the mofussil properties. It is not useful

now to recite the history of the cumbrous arrangement by which originating summonses on the Original Side were until lately required to be

presented accompanied by a document called a plaint and in the form of a plaint. It would appear that this requirement was due to the fact that the

opening words of Section 129 of the CPC were not adverted to. However that may be, under the Rules as they stood at the time with which we

are concerned, a person who took out an originating summons had to present with it not an affidavit merely but a document in the form of a plaint.

This document was not really a plaint and was never treated in the same way as a plaint in the ordinary sense was treated. Orders as to leave

under Clause 12 were not made in respect of such plaints, at all events with the same certainty and uniformity as in the case of plaints ordinarily so

called. When, therefore, the learned Judge came to the conclusion that the trustees of the deed could not fight out their battle with these debtors by

originating summons and made an order that this document should be treated as a proper plaint it escaped his observation and the observation of

all the parties that leave under Clause 12 had not been endorsed upon this document and that there might be a difficulty in granting the leave at a

stage of the case which might be said no longer to be the commencement. The position, however, is that this suit is before us as upon a plaint, no

leave having been granted under Clause 12 of the Letters Patent. Accordingly Sir Benode Mitter for the Maharaja contends that as regards all the

properties, save the three properties within the limits of the Ordinary Original Civil Jurisdiction of the High Court, the suit is incompetent and must

be held to be without jurisdiction. To my mind there is no answer to this contention save one, namely, the answer made by the Advocate General

on behalf of the trustees that Section 21 of the CPC cures that defect for the purposes of this appeal; and I proceed to consider whether Section

21 of the Code does apply so as to entitle this Court on appeal from the original jurisdiction to say that the suit should not be dismissed in so far as

there was no jurisdiction in the learned Judge to entertain it. This question I find to be troublesome. It is dealt with by the Code in Sections 117 and

120. Section 117 is a broad general provision to say that the provisions of the Code shall apply to the High Courts and it is quite clear that large

tracts of the Code do apply to the High Courts both in their Appellate and in Original Jurisdiction. Section 120 is a very limited exception:

The following provisions shall not apply to the High Court in the exercise of its Original Civil Jurisdiction, namely Sections 16, 17 and 20.

13. When we are considering whether Section 21 applies to the High Court in the exercise of its Original Civil Jurisdiction the argument is naturally

pressed before us that if Sections 16, 17 and 20 are expressly except-ed from a bundle of provisions dealing with the place of suing, it is hard to

resist the conclusion that Section 21 is not excepted from application to the Original Side. On the other hand, it must be conceded that as against

this principle there is another principle attracted, a principle of very plain strength, namey, that if Section 16 is not to be applied, for example, to the

Original Side, any other section which appears to be incidental or ancillary thereto or be a further working out of what is laid down by Section 16

can hardly be intended to be applicable. It might be as well to examine this matter with some attention to the function of the Code in Sections 15 to

25 inclusive. I will premise that the jurisdiction of the High Court as it stood in 190s, when this Code was republished, depended upon Section 9 of

the Indian High Courts Act of 1861. That was an Act of the Imperial Legislature and it is said that ""Each of the High Courts to be established

under this Act shall have and exercise all such Civil, Criminal, Admiralty, and Vice Admiralty Testamentary, Intestate, and Matrimonial Jurisdiction,

original and appellate, and all such powers and uethority for and in relation to the administration of justice in the Presidency for which it is

established, as Her Majesty may by such Letters Patent as aforesaid grant and direct subject, however, to such directions and limitations as to the

exercise of, original, civil and criminal jurisdiction beyond the limits of the Presidency towns as may be prescribed thereby."" It was to have such

power and authority as Her Majesty may by Letters Patent grant and direct.

14. Now, the Letters Patent, as it stood in 1808, contained a direction in Clause 12. Clause 12 is a clause which, if it was to be construed for the

first time according to its grammatical construction and in strict accordance with its wording, might perhaps have to be given a somewhat different

meaning to that which is well settled now in all the High Courts in India The effect of the construction upon which all the High Courts are agreed is

that, as regards suits for land, the High Court can take cognizance if the land is situate wholly within the local limits or, where the land is situate in

part only within such limits, if leave has been first obtained; and that as regards suits other than those for land the High Court has jurisdiction if the

cause of action has arisen wholly within the limits or where the cause of action has arisen in part only within the limits, if the leave of the Court shall

have been first obtained or if the defendant dwells or carries on business or personally works for gain within these limits. The Letters Patent, as

they stood in 1808, contained a clause No. 44 which has since been amended by the Letters Patent of 1919. The clause that then stood was ""All

the provisions of these our Letters Patent are subject to the legislative powers of the Governor General in Council.

15. Now, that, being the position of affairs as regards the Original Side, when the Legislature in 1908 came to amend and re-edit the Code of Civil

Procedure, what was the Legislature intending to do by the clauses that are now under consideration? It is necessary to remember that in different

provinces of India there are different arrangements as regards Courts subordinate to the District Court. In this province, the lowest grade is that of

the Munsif. In other provinces, the lowest grade of judicial officers is that of Subordinate Judges. Taking this province, by way merely of example

and referring to the Act of 1882 the Assam and Bengal Civil Courts Act, one finds that in legislation applicable to each individual province it has

already been laid down what Courts are to exist for the purposes of civil work. It has already been laid down that the Local Government is by

notification to assign certain territorial jurisdiction to each of those Courts. It has already been laid down that certain grades of officers are to have

certain pecuniary limits to their jurisdiction and in some cases the pecuniary limit to an officer"s jurisdiction may be entirely personal to himself.

When, therefore, the Legislature in 1908 came to make the provisions we are now considering, it had to face first of all the High Court with a

jurisdiction which was defined by the Letters Patent. It had to face also an arrangement different in different provinces by which various kinds of

judicial officers under the District Courts were exercising under different limits and under different arrangements various civil powers. In these

circumstances I propose to go through these particular sections one by one to see whether any light is thrown upon the question whether Section

21 applies in a case like the present.

16. The first section is Section 15. This is the opening section under the heading ""Place of Suing"" and it is to the effect that every suit shall be

instituted in the Court of the lowest grade competent to try it. In view of what I have said as to the different arrangement of Courts subordinate to

the District Courts in different provinces, it seems reasonably clear that that provision is necessary to enable the subsequent sections to take effect

all over British India so as to point out a single Court which is the proper Court for each individual case. The District Judge and the Subordinate

Judge and the Munsif may all have the same territorial jurisdiction theoretically, but this is to say as between which of them in a particular case the

proper place of suing is to be. I ask myself--does that apply to the High Court in its Original Jurisdiction because Section 15 is not one of the

sections mentioned in Section 120? It seems to me reasonably clear that it does not. The High Court has no jurisdiction in a case of a Small Cause

Court type under Rs. 100; but the Presidency Small Cause Court to which by the way Section 15 is not applicable at all has concurrent jurisdiction

up to a certain point with the High Court, and there is a special provision in the Presidency Small Cause Courts Act as to what is to happen if a

person brings a suit in this Court above Rs. 100 which might have been brought in he Small Cause Court. It cannot be said that Section 15 has any

application in practice or in substance to the original jurisdiction o the High Court. I do not here pause to enquire into the position of the City Civil

Court in Madras or matters of that kind. In substance it does not seem to me that it would be a valid argument to say that because Section 15 is

not mentioned in Section 120, therefore, it must have some application to the original jurisdiction.

17. The next section is Section 16 which is not, by the terms of Section 120, to be applied to High Court. The reason of that exception, as also of

Sections 17 and 20 is perfectly plain. It is that, but for the exception it might be well-contended that Clause 12 of the Letters Patent had been

overridden altogether and that the jurisdiction of the High Court was to be found by reference to Clauses 16, 17 and 20. Section 16 is not quite

the same, though it is not very different from the arrangement to be found in the Letters Patent. It has been said, in at least one case, that the words

Suit for land"" mean the same thing as Clauses (a) to (f) in Section 16; but that it strikes me as a little hazardous. Broadly speaking the difference is

that in the case of suits for land where a part of the land is outside the jurisdiction, leave is required under the Letters Patent and it is not required

u/s 17 of the Code.

18. I come now to Section 18 and that applies where it is uncertain whether the land in suit is within the jurisdiction of one Court or another Court.

The Court in which the suit is brought may record a statement of this uncertainty and thereupon proceed with the case and that section in its last

clause contains a provision not unlike the provision afterwards repeated ins. 21. It is very important, therefore, to make up one"s mind whether it

can be said that Section 18 applies to the High Court in its original jurisdiction. As to that it seems to me that prima facie the words ""where it is

alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any Immovable property is situate"" must be read as

having reference to the words in Section 16 ""shall be instituted in the court within the local limits of whose jurisdiction the property is situate."" And

if I look at the substance of the matter, it appears to me to be this that as litis the function of Section 16, in view of the various local Acts, such as

the Assam and Bengal Civil Courts Act to lay down Rule so as to distribute among the provincial Courts the business which is likely to arise in

respect of Immovable properties, Section 18 must be intended to meet cases of dubiety in the application of that distribution and that it is prima

facie wrong to suppose that Section 18 which in a way gives jurisdiction to a Court can operate outside the scope which the Legislature has given

to itself in Section 16. If one is distributing jurisdiction among certain sets of Courts upon certain principles it is easy to say first of all that the

substantive principles are to be such and such and with reference to the same subject-matter it is legitimate to go on to say that in cases of

uncertainty the jurisdiction which is now being given shall include a certain special jurisdiction for the avoidance of unnecessary litigation; but it is a

very different matter to read such a section as Section 18 as giving in effect a further jurisdiction to a Court like the Original Side of the High Court

with reference to which we know that the principles governing jurisdiction are not intended to be affected by this part of the Act. It is possible that

one reason why Section 18 is not mentioned in Section 120 is this that Section 18 like Section 19 is dealing not with any one Court but with cases

of two Courts. Section 18 like Section 19 would certainly apply if one assumed it to be possible that a small area of land came into question as to

which it was uncertain whether it was within or without the Marhatta dib, and if the suit were brought in a mofussil Court bordering upon the

original jurisdiction limits; but these two sections deal with two or more Courts and it may be that had the Legislature added Sections 18 and 19 to

the three sections which are mentioned in Section 120, doubt or difficulty would have been raised as to whether the neighbouring mofussil Court

could act in such a case on the principles laid down by the sections. That is a possible reason way they have not been mentioned.

19. As regards Section 19 which deals with compensation for wrongs it matters nothing whether it is made applicable or not made applicable to

the original jurisdiction because the principle therein laid down is well within the principles recognized by Clause 12 of the Letters Patent.

20. Section 20 again is expressly excluded from being applied to High Courts.

21. Then we come to the section in question that """No objection as to the place of suing shall be allowed by any Appellate or Revisional Court

unless certain conditions apply. There again, it appears to me that it is one thing to say as regards Courts among which you are distributing

jurisdiction that not only shall they have what may be called their proper or substantial jurisdiction but that in some cases of doubt or oversight or

mistake they shall have a special or anomalous jurisdiction for the sake of avoidance of litigation, and it is a very different matter to say that by a

clause placed as this is in the middle of clauses which are not intended to alter the Letters Patent this Court, even though the right of appeal is

granted by the Letters Patent in addition to the Code, is in effect to exercise jurisdiction which is not warranted by the Letters Patent. It appears to

me that although the Legislature had power in 1908 to override the Letters Patent the Legislature is not likely to have intended so to do in the

manner which is now contended for.

22. To continue with this bundle of sections, Sections 22 and 23 do not seem to take effect upon the original jurisdiction because Section 23 in

pointing out the Courts that are to exercise the powers given by Section 22 speaks of Courts subordinate to other Courts and the High Court on

the Original Side does not seem to be brought effectively within Section 23.

23. Section 24 throws no light upon the matter as it is a case where certain powers are expressly conferred upon the High Court and clearly upon

the high Court in its original jurisdiction, nor is any further light thrown upon the matter by Section 25. I ought to say that I reject altogether, as

having no force at all, the argument that because the words '' revisional Court"" are mentioned along with the words ""Appellate Court"" in Section 21

this shows that the section does not apply to the Original side. It is nobody''s contention that the section applies only to the Original Side and it is,

in my judgment, a point that is altogether bad.

24. For these reasons it appears to me that it would be unsafe and wrong to hold that Section 21 ought to be applied to the present case and I

accept the argument of Sir Benode Mitter to the effect that as regards all properties outside the original jurisdiction of the High Court this suit was

without jurisdiction and that we must give effect to that extent, at all events, to the objection though it is taken in this Court for the first time.

25. In these circumstances, the question arises as to the case before us so far as it is within the power of the Court under Clause 12 of the Letters

Patent. The Advocate-General on behalf of the plaintiff asks us to grant a declaration such as is asked for by the plaintiff in respect of the three

Calcutta properties which at the time of the suit still belonged to the trustees and which subsequent to the suit have been sold by the prior

encumbrancers in satisfaction of the prior encumbrances. So far as this question is concerned it is no way necessary to embark upon a discussion

of what I have called the second branch of this case upon the merits. There is no question here of the debtors at the time of the Maharaja''s

mortgage having been in possession of the title deeds or indeed in possession of the properties and the one question which arises on the merits as

regards the Calcutta properties is the question whether or not the trust deed of 1st April, 192l, is a good and valid document. If it be a good and

valid document, then the question arises whether now in view of the fact that the whole importance of this question as regards the Calcutta

properties has really been terminated by the properties being swept away by prior encumbrancers it is proper to make any declaration solely as

regards them. On the first question whether the deed of 1st April, 1921, was a good and valid document I have the greatest difficulty in taking the

case of the debtors or of the Maharaja with any seriousness The debtors appear to me (in particular if it be true as the Maharaja says that he took

his mortgage in December, 1923, without any notice of the document of April, 1921) to be rascally and absurd people who owe it to their good

fortune or to their relative''s weakness that they are not being made the subject-matter of some enquiry by a Criminal Court. Let us re-call how the

matter stands. There was a conveyance in trust to those trustees on behalf of the creditors in April, 1921. The debtors got their nine months'' time.

They got another year''s time. They got a third year''s time asking for it by letters to the trustees. They were permitted to sell with their own hands

and the trustees came in afterwards and made good their title. The trustees knew that the debtors were endeavouring to dispose of their properties

and they were allowing them to do so. Then without any question being raised upon the subject they gave a mortgage to their relative in December,

1323, not for any further advances but for advances which they had been getting from him in the meantime and there is not a scrap of paper to

show that in February, 1923, when they borrowed over two lacs they promised to give him any mortgage at all. Let us ask first of all, is it

contended in this case to this day that the deed of trust of April. 1921, was fraudulent in the sense of Section 53 of the Transfer of Property Act? I

do not think that has been mentioned before this Court. But in any case, it would be an extravagant suggestion and it would be further extravagant

to pretend that the creditors who were the real beneficiaries under that deed were themselves taking with notice of its fraudulent character. That

consideration may be put on one side. I understand again that if a man makes a deed for the benefit of creditors and communicates it to nobody or

communicates it only to the trustee and no creditor either gets to know of it or to assent to it or to act upon it, the deed is a mere mandate and may

be revoked. I understand again that it may be possible to execute a deed of arrangement for the benefit of creditors, to communicate it to the

trustee and to make it a term that unless all or certain creditors assent the deed is to be of no force or effect. If all do not assent such a person may

no doubt, if he acts timely and promptly and fairly, revoke and say that the condition upon which he was willing to execute the deed has not been

fulfilled. That is not suggested. In this case, the debtors themselves acted upon the deed, sold the properties with the assent of the trustees and paid

money over to the trustees for distribution to the beneficiaries of the deed. It is merely talking nonsense to suggest that because some creditors

mentioned in the agreement of March, 1921. failed to sign or because a particular creditor having signed failed to keep his bargain, these debtors

could in law treat this document as of no effect. It does not occur to me as a reasonable supposition that when these debtors executed the

mortgage of the 10th December, 1923, they were either honest or thought they were honest. To my mind, this branch of the case is hopelessly bad

and I think that the trustees succeed entirely in establishing that this is a perfectly good deed of trust. I need not explain that had these debtors been

adjudicated insolvent on a petition presented at such time that this deed of arrangement could have been availed of as an available act of insolvency

then no doubt this arrangement would have fallen to the ground. Such a deed of arrangement under one or other of the definitions of acts of

insolvency it would have been almost hopeless to defend. In this case no one appears, so far as I knew, to have attempted to make these debtors

insolvent and no order of adjudication has ever been made Upon a petition presented in time to enable the execution of this deed to be treated as

an act of insolvency. I am of opinion, therefore, that this case must be regarded on the footing that the deed was a perfectly good one.

26. It is not possible in connection with the Calcutta properties for this Court to consider or decide whether or not the Maharaja can still make a

good title on the document to mofussil lands by reason of the fact, as alleged, that the trustees were negligent, in leaving the title deeds with the

debtors, that the Maharaja was diligent and that, in fact, in spite of registration he had no notice. That argument applies only to the mofussil

properties with which this Court has, in my opinion no right to intermeddle. The question, therefore, is as regards the Calcutta properties--whether

this Court should treat this as a suit having reference to them only and should give a declaration to the trustees although in substance as a matter of

business there is no longer any importance in the trustees asserting claim to the equity of redemption in these properties. I have come to the

conclusion that in the present case it would not be right to give any such declaration. I quite agree that the suit as regards these Calcutta properties

at the time it was brought was a suit for land. I quite agree that the fact that the properties have, as in my view they have, in substance been entirely

swept away by prior encumbrancers would not make the suit cease to be competent as a suit for land. But in my judgment this declaration should

only be given as a matter of discretion and the discretion has to be exercised upon the whole state of the facts as it appears at the time the

declaration is granted. It does seem to me that an entirely idle and useless declaration of this sort should be made with any idea that the judgment

of the Court would in that event be a more powerful assistance in some other litigation upon the principle of res judicata. We have no right to deal

with the whole of this matter, that is to say, we must in any case leave the Maharaja''s contention about the title-deeds for the decision of some

other Court. I am not going to give a declaration which I regard as having no possible utility but merely as an excuse for affording an argument to

one or other of the parties which covers only half of a case in some other Court. I am of opinion that it would not be right to give a declaration

merely for that ulterior purpose and I am of opinion that on its merits this suit would never have been brought for a declaration in respect of the

Calcutta properties alone. After all the primary fault is with the plaintiff. It was his business to see that he started this litigation in a proper way and

not by originating summons. In | the second place, it was his business to see that he got the necessary leave; and, in my judgment, as against him it

is not right that we should give a declaration as regards the Calcutta properties having regard to the fact that on its merits there is no occasion for

such a declaration to be given.

27. It appears to me that the remaining question is the question of costs. As regards that matter as the plaintiff''s suit in the end is dismissed no view

that one can take of either the debtors'' conduct or the Maharaja''s conduct would make it proper to maintain the order for costs that has been

made against him. In my judgment, the circumstances of this case do not require us to order the plaintiff to pay any costs either to the Maharaja or

to the debtors at first instance. As regards this appeal, however, it appears to me only right that the Maharaja appellant should have his costs, but

in no circumstances can any cost of this appeal be given to the debtors.

28. In these terms the appeal is allowed, the learned Judge''s decree is set aside and the plaintiff''s suit dismissed.

Buckland, J.

29. I agree.