CHOGMAL BHANDARI & OTHERS A

v.

DEPUTY COMMERCIAL TAX OFFICER II DIVISION KURNOOL

February 4, 1976 B

[R. S. SARKARIA AND MURTAZA FAZAL ALI, JJ.]

Andhra Pradesh General Sales Tax Act—Sec. 17(1)—*Whether sales tax dues of a settlor can be recovered from trustees—Indian Trusts Act.* 1882—*Sec.* 4—*Unlawful Trust—Transfer of Property Act—Sec.* 53—*Transfer with intent to defeat or delay creditors—Liability to pay tax—Whether depends on assessment and quantification—Whether authorities under Sales Tax Act can decide complicated questions of title.* C

Kollayya and Narasimaiah carried on business in partnership. The firm incurred huge losses and was dissolved in 1963. Kollayya's son Bala and Bala's son B.V.S. Rao carried on joint Hindu Family business. B.V.S. Rao applied, being a minor, through his father Bala, for registration which was granted by the Sales Tax Authorities. Thereafter, Sales Tax Authorities continued to make assessment in the name of B.V.S. Rao from the year 1966 to the year 1969. Although B.V.S. Rao informed the Sales Tax Department that the business was in fact carried on by the Joint Hindu family yet no assessment was made D in the name of Joint Hindu family until 1971. Although B.V.S. Rao informed the Sales Tax Department that his business had come to an end and that the business was carried on by his grand-father Kollayya, yet the Sales Tax Department neither cancelled the registration of B.V.S. Rao nor issued fresh notice to Kollayya. In September, 1968, Kollayya and Narasimiah the partners of the dissolved firm executed a registered deed of Trust by which certain properties were vested in the Trustees for the purpose of paying off the creditors mentioned in the Trust Deed who had obtained decrees against the settlors. In the year E 1971 assessments were made against the Joint Hindu Family and penalties were also imposed for not paying the sales tax. All the assessments prior to the year 1971, were made in the name of B.V.S. Rao. Since the Sales Tax Authorities could not recover the monies from the assessees they issued notices under s. 17(1) of the Andhra Pradesh General Sales Tax Act to the appellants who were the trustees of the said trust on the ground that the trust was void and fraudulent.

A writ petition filed by the appellants in the High Court for quashing the F said notices was dismissed by the High Court on the ground that the deed of trust was fraudulent and had been executed to defeat the sales tax dues.

On an appeal by special leave it was contended by the appellants :

(1) The moment the trust deed was executed by Kollayya and Narasimaiah the title to those properties vested in the trustees and thus it was beyond the reach of the Sales Tax Department.

(2) When the impugned notice was issued in 1970, tax had not been G quantified since the assessments were made subsequently.

It was contended by the respondents that :

(1) Kollayya must be deemed to have knowledge as the Karta of the Joint Hindu Family that he had incurred sales tax liability.

(2) Under s. 17(1) of the Act, the Sales Tax Authorities could realise the sales tax dues even from the trustees and the execution of the H trust deed would not stand in the way of the recoveries.

(3) The trust is hit by s. 53 of the Transfer of Property Act, being made with the intent to defeat or delay the creditors.

(4) The liability of the appellants arose as early as in 1966-67 and the trust deed came into existence in September, 1968. Kollayya and trustees, therefore, could not be unaware of the tax liability. The creation of the trust subsequently was, therefore, a device to evade the payment of arrears of sales tax.

Allowing the appeal by special leave,

HELD: (1) The Sales Tax Department as also the High Court have held in a very summary fashion that the trust deed was void and fraudulent without considering the real point of law which arose on the admitted facts. [329 A]

(2) The moment the trust deed was executed the trustees acquired an independent title under the Trust. The trust deed clearly mentioned the names of the creditors to whom the money was to be paid. Under the trust, the settlors did not reserve any advantage or benefit for themselves. There is no material to show that the decrees obtained by the creditors were collusive and the trust deed was executed before the assessment orders against the Joint Family were made and, therefore, there was no real debt due from the settlors when the trust was executed. [329A-D]

(3) The present trust cannot be said to be unlawful within the meaning of s. 4 of the Indian Trust Act, 1882, since the trust is neither forbidden by law nor does it defeat any legal provision nor can it be said to be fraudulent *ex facie*. [330D-E]

Whether the trust deed has been executed with the intent to defeat or delay the creditors within the meaning of s. 53(1) of the Transfer of Property Act depends on the intention of the settlors depending mainly on the facts and circumstances of the case. The mere preference of one creditor to another by itself does not lead to the irresistible inference that the intention was to defeat the other creditors. [331C-E]

Musahar Sahu and another v. *Hakim Lal and another* L.R. 43 I.A. 104; *Ma Pwa May and another* v. *S. R. M. M. A. Chettiar Firm*, AIR 1929 P.C. 279, 281 and *Sampatrai Chhogalalji and others* v. *V. S. Patel, Sales Tax Officer, and others*, 17 S.T.C. 29, 34, approved.

(4) Once the trust is held to be valid the department cannot proceed against the trustees under s. 17(1). The section does not empower the Sales Tax Department to follow the money in the hands of a bonafide transferee from the assessee even before the dues are accrued. The Sales Tax Authorities under s. 17 can only determine the jurisdictional facts and cannot proceed beyond that. The authorities cannot be a judge in its own cause and determine or decide complicated questions of title. [333C-E]

Katikara Chintamani Dora & Ors. v. *Guntreddi Annamanaidu & Ors.* [1974] 2. S. C. R. 655, followed.

In the present case the Sales Tax Authorities cannot be allowed to hold that the deed of trust executed by the settlors was hit by s. 53 of the Transfer of Property Act. Even if a transfer is made with intent to defeat or delay the creditors it is not void but only voidable under s. 53. If the transfer is voidable the Sales Tax Authorities cannot ignore or disregard it but have to get it set aside through a properly instituted suit after impleading necessary parties and praying for the desired relief. [333F-G]

Chutterput Singh & Ors. v. *Maharaj Bahadoor and others*, L.R. 32 I.A. 1 and *Zafrul Hasan and others* v. *Farid-Ud-Din and others*, A.I.R. 1945 P.C. 177, approved.

(5) So long as the tax had not been assessed and quantified it could not be said that any specific debt due to the Revenue from the assessee had come into existence. The question of such a non-existent debt, being a first charge on the property at the date of the execution of the Trust Deed did not arise. [334E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1148 of 1975.

Appeal by special leave from the judgment and order dated the 2-12-1974 of the Andhra Pradesh High Court in writ petition No. 2250 of 1973.

M. C. Bhandare and *Miss A. Subhashini* for the appellant. A

P. Ram Reddy and *P. P. Rao* for the respondent.

The Judgment of the Court was delivered by

FAZAL ALI, J.—This is an appeal by special leave against the judgment of the Andhra Pradesh High Court dated December 2, 1974 and arises under the following circumstances. B

Itikala Kollayya and his brother-in-law Kovvuru Narasimhaiah constituted partnership firm dealing in foodgrains. The firm carried on the business in the name and style of "Kovvuru Narasimhaiah and Ktikala Kollayya". The firm, however, stood dissolved in 1963. The firm appears to have been in serious financial difficulties and incurred debts to the tune of about Rs. 70,000/-. The creditors filed C an insolvency petition but the petition was ultimately dismissed because it was held that the firm had no means to discharge the debts. Subsequently the business was started in the name of B. V. S. Rao son of Bala Seshaiah. After the death of Itikala Kollayya his son Bala Seshaiah and his son B. V. S. Rao carried on joint Hindu family business. In fact B. V. S. Rao applied on May 8, 1966 for a certificate of registration to the Sales Tax Department of the State and was given D the same. B. V. S. Rao who was a minor had applied for the certificate through his guardian Bala Seshaiah. Thereafter the Sales Tax Department continued to make assessments in the name of B. V. S. Rao. Thus for the years 1966-67, 1967-68 and 1968-69 the provisional assessments were made in the name of B. V. S. Rao the minor. It is not disputed that during all these years the business was run in the name of B. V. S. Rao the minor grandson of Kollayya. There are E also materials on the record to show that B. V. S. Rao had informed the Sales Tax Department that the business was in fact carried on by the Joint Hindu family and yet no assessment was made in the name of the Joint Hindu family until 1971. It is true that the High Court has held that B. V. S. Rao was merely a *benamidar* for Kollayya who was the real proprietor of the firm and therefore the real dealer would be Kollayya and not B. V. S. Rao. The High Court also relied on F the circumstance that Kollayya did not appear before the Sales Tax Department in obedience to the notices issued to him and therefore the High Court thought it was too late in the day for Kollayya to contend that he was not a dealer within the meaning of the Andhra Pradesh General Sales Tax Act. Mr. Ram Reddy learned counsel for the respondent did not support this part of the reasoning of the High Court because the Sales Tax Department having itself issued the certi- G ficate of registration to B. V. S. Rao and having recognised him as a dealer could not make a somersault and start assessing tax in the name of Kollayya who was not at all a registered dealer. Furthermore, it would appear that B. V. S. Rao had himself informed the Sales Tax Department that his business had come to an end and that the business was carried on by his grandfather and yet the Sales Tax Department did not choose to cancel the registration of B. V. S. Rao or to issue H fresh notice to Kollayya. In these circumstances the ball was in the court of the Sales Tax Department which appears to have taken delayed action in the matter for assessing Kollayya as the manager of the joint Hindu family for the first time in 1971. Mr. Ram Reddy confined his arguments only to the question that in view of the circumstances of the case Kollayya must be deemed to have knowledge as the *karta* of the joint Hindu family that he had earned sales-tax liability and from this alone an inference was sought to be raised that the trust was a fraudulent transaction. We are, however, unable to press this inference too far in view of the reasons which we shall give hereafter.

It appears that on May 26, 1969 B. V. S. Rao informed the Sales-Tax Department that he had stopped the business with effect from August 1, 1968 and despite this fact the Sales Tax Department went on making assessment orders in the name of B. V. S. Rao. Further on January 17, 1968 the Deputy Commercial Tax Officer while making the assessment order had stated that the business was being carried on as joint family business by Bala Seshaiah the father of B. V. S. Rao. It appears that on September 16, 1968 Itikala Kollayya and Kovvuru Narasimhaiah, i.e. the partners of the dissolved firm, executed a registered deed of trust by which the properties mentioned in Schedule 'B' were vested in the trustees for the purpose of paying off the creditors who were named in Schedule 'A' of the trust deed. Thirteen persons were named in Schedule 'A'. According to the assessees the creditors mentioned in Schedule 'A' had obtained decrees against the settlors and it was for the purpose of discharging the previous debts of those creditors that the trust was executed. Subsequently it appears that the assessments were made against the joint Hindu family on January 18, 19 and 24, 1971 and penalties were also imposed on the assessees for not paying the sales tax. The sales tax authorities, therefore, made the assessment in the name of the joint Hindu family for the first time on January 18, 1971 and prior to that the assessments were made in the name of the minor B. V. S. Rao. The Sales Tax Department having found that the assessees had constituted a trust in respect of the properties and as the amounts could not be realised from the assessees notices were issued on the petitioners who were the trustees for payment of the amounts due under the various assessments made by the Sales Tax Department on the joint Hindu family. The Sales Tax Department was of the view that the deed of trust dated September 16, 1968 was void and fraudulent and was brought about to defeat the debts of the Sales Tax Department in the shape of the assessments made against the joint Hindu family whose business was carried on by its *karta* Bala Seshaiah. Demand notices under s. 17(1) of the Andhra Pradesh General Sales Tax Act were served on the petitioners who filed a writ petition before the Andhra Pradesh High Court for quashing the notices, on the basis of which the amounts were sought to be recovered. The High Court held that the deed of trust was fraudulent and had been executed to defeat the Sales Tax Department of its dues and the petitioners were, therefore, trustees of an invalid trust and being in possession of the properties held the same on behalf of the debtor assessees who were liable to pay the amounts. On this finding the writ petition was dismissed by the High Court. The petitioners moved the High Court for granting certificate of fitness for leave to appeal to this Court which having been

refused they obtained special leave from this Court and hence this A
appeal.

It is true that the Sales Tax Department as also the High Court have held in a very summary fashion that the trust deed was void and fraudulent and, therefore, it could be ignored by the Sales Tax Department. Normally this should have been a finding of fact which could have settled the matter beyond any controversy. But on a perusal of B
the facts and circumstances of the case we find that the real point of law which arose on the admitted facts does not appear to have been considered either by the sales tax authorities or even by the High Court. Merely because the joint Hindu family had earned liability to pay sales-tax it had been inferred by the High Court as also by the sales tax authorities that the registered deed of trust executed on September 16, 1968, about three years before the actual assessments C
were made in the name of the joint Hindu family was a colourable transaction. Learned counsel for the appellants Mr. M. C. Bhandare submitted that the petitioners were merely trustees who were to discharge the debts of the creditors mentioned in Sch. 'A'. The moment the trust deed was executed by Kollayya and Narasimhaiah the title to those properties vested in the trustees and thus put beyond the reach of the Sales Tax Department. It cannot be said in the circumstances D
that the trustees were holding the properties either on account of or on behalf of the joint Hindu family, because they had acquired an independent title under the trust. In our opinion, the contention put forward by the learned counsel for the appellants is sound and must prevail. The learned counsel appearing for the respondent, however, submitted that the mere fact that the members of the joint Hindu family were aware that they had incurred the sales tax liability because E
they were dealers in foodgrains and had conducted a number of sales was sufficient to show that the trust deed was fraudulent and unlawful. It was also submitted that under s. 17(1) of the Andhra Pradesh General Sales Tax Act, the sales tax authorities could realise the sales tax dues even from the trustees and the execution of the trust deed would not stand in the way of the recoveries sought to be made against the petitioners. F

We would first consider the question as to the nature of the trust deed executed by the settlors. It is not disputed that the trust deed was a registered instrument and came into existence three years before the actual assessments were made in favour of the joint Hindu family. Furthermore it is clearly stipulated in the trust deed that the object of the trust was to discharge the debts of the previous creditors of the G
settlors who had obtained decrees from the Courts. The names of those creditors are mentioned in Schedule 'A' and there is no material before us to show that the creditors mentioned in Schedule 'A' are fictitious persons. It is true that in the copy of the trust deed printed in the paper book the names of the creditors are not mentioned but from the certified copy of the original trust deed it appears that the names are there which constitute of the following persons : H

1. Narendrakumar Manoharlal & Co.
2. Devraj Dhanumal.

3. Dhupaji Phoolchand.
4. Bhubutmal Chandumal.
5. Bhubutmal Bhoormal.
6. Kesarmal Mancharlal.
7. Tarachand Santilal.
8. Manrupji Nathumall.
9. Pokhraj Kantilal.
10. Pratapchand Kundanmal.
11. Ambapuram Bachu Pedda Subbiah & Sons.
12. Meda Krishnayya.
13. T. Nagalakshmidevamma Minor by guardian husband T. Sanjeeva Rao.

It is well settled that it is open to the settlors to create a trust for discharging the debts of their creditors. Such an object cannot be said to be unlawful. Section 4 of the Indian Trusts Act, 1882, runs thus :

> "4. A trust may be created for any lawful purpose. The purpose of a trust is lawful unless it is (a) forbidden by law, or (b) is of such a nature that, if permitted, it would defeat the provisions of any law, or (c) is fraudulent, or (d) involves or implies injury to the person or property of another, or (e) the Court regards it as immoral or opposed to public policy.
>
> * * * *"

The object of the trust is neither forbidden by law, nor does it defeat any legal provision, nor it can be said to be fraudulent *ex facie*. In these circumstances the view taken by the High Court or the Sales Tax authorities that the trust executed in favour of the petitioners was fraudulent or unlawful cannot be accepted.

The other question raised by Mr. Ram Reddy learned counsel for the respondent was that the trust is hit by s. 53 of the Transfer of Property Act, 1882, the relevant portion of which runs thus :

> "53(1) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed."

Before analysing the ingredients of the section mentioned above, it may be necessary to state the admitted facts :

(1) that at the time when the trust was executed no assessment order against the joint Hindu family which was managed by one of the executants of the trust had been passed. Thus there was no real debt due from one of the executants of the trust at the time when the trust was executed;

(2) that the trust did not have for its object any unlawful purpose;

(3) that the names of the creditors were clearly mentioned in Schedule 'A' of the trust as also the properties some of which had already been sold to liquidate debts of the settlors;

(4) that under the trust the executants did not reserve any advantage or benefit for themselves; and

(5) there is no material in the present case to show that the creditors mentioned in Schedule 'A' had obtained collusive decrees or that they were aware of the debts owed by one of the executants to the Sales Tax Department before the execution of the trust deed.

In the facts and circumstances of this appeal therefore it cannot be said that the trust deed was executed to defraud the creditors namely the Sales Tax Department. Under s. 53 of the Transfer of Property Act a person who challenges the validity of the transaction must prove two facts—(1) that a document was executed by the settlor; and (2) that the said document was executed with clear intention to defraud or delay the creditors. How the intention is proved would be a matter which would largely depend on the facts and circumstances of each case. It is well settled that the mere fact that a debtor chooses to prefer one creditor to the other, either because of the priority of the debt or otherwise, by itself cannot lead to the irresistible inference that the intention was to defeat the other creditors. In *Musahar Sahu and another* v. *Hakim Lal and Anr.*(1) where the Privy Council observed as follows :

> "The transfer which defeats or delays creditors is not an instrument which prefers one creditor to another, but an instrument which removes property from the creditors to the benefit of the debtor. The debtor must not retain a benefit for himself. He may pay one creditor and leave another unpaid : *Middleton* v. *Pollock*—(1876) 2 Ch.D. 104, 108. So soon as it is found that the transfer here impeached was made for adequate consideration in satisfaction of genuine debts, and without reservation of any benefit to the debtor, it follows that no ground for impeaching it lies in the fact that the plaintiff who also was a creditor was a loser by payment being made to this preferred creditor—there being in the case no question of bankruptcy."

This decision was endorsed by the Privy Council in *Ma Pwa May and another* v. *S. R. M. M. A. Chettiar Firm*(2) where the Judicial Committee observed as follows :

> "A debtor is entitled to prefer a creditor, unless the transaction can be challenged in bankruptcy, and such a preference cannot in itself impeached as falling within s. 53."

(1) L.R. 43 I.A. 104.

(2) A.I.R. 1929 P.C. 279, 281.

A The learned counsel for the appellants relied on a decision of the Gujarat High Court in *Sampatraj Chhogalalji and others* v. *V. S. Patel, Sales Tax Officer,* and *others*,(1) where a Division Bench of the High Court observed as follows :

> "The effect of the assignment is to create a valid title in the trustees and a valid and enforceable trust for the B benefit of the creditors as soon as the deed has been executed and the creditors have assented to it. It is thus clear under the said deed of arrangement, the petitioners as trustees became the legal owners of the properties assigned to them, holding the trust premises upon trust to collect them in the first instance and after selling them to distribute the sale proceeds thereof rateably amongst the various C creditors, a list of whom was annexed to Schedule II to the deed of arrangement. It follows, therefore, that the trustees were not holding the sale proceeds which they deposited with the said bank in a separate account in their names as agents of the said firms or any one of them, nor were they the transferees of or successors to those businesses. * * * * * It is also not possible to say that the bank D was a person from whom any amount of money was due to any one of the aforesaid firms who were the dealers in respect of the arrears of tax. That being the position, the very first condition necessary for the application of section 39 is totally wanting in this case."

The facts of the present case appear to be on all fours with the facts E in the Gujarat case cited above. The High Court clearly held that the fact of the assignment was to create a valid title in the trustees and once the title passed to the trustees on the registration of the trust deed, the trustees could not be said to hold the properties which vested in them either on behalf or on account of the settlors.

Mr. Ram Reddy relied on s. 17(1) of the Andhra Pradesh General Sales Tax Act which runs thus :

> F "17. (1) The assessing authority, may at any time or from time to time, by notice in writing (a copy of which shall be forwarded to the dealer at his last address known to the assessing authority) *require any person from whom money is due or may become due to the dealer, or any person who holds or may subsequently hold money for, or* G *on account of the dealer, to pay* to the assessing authority either forthwith if the money has become due or is so held within the time specified in the notice (but not before the money becomes due or is held) so much of the money as is sufficient to pay the amount due by the dealer in respect of arrears of tax, penalty or fee or the whole of the money when it is equal to or less than that amount."

H Particular reliance was placed on the words underlined in the section in order to contend that even if the trust was a valid document the

(1) 17 S.T.C. 29, 34.

trustees would be deemed by virtue of s. 17 to hold the money for or on account of the dealer. This contention is clearly negatived by the decision of the Gujarat High Court in *Sampatraj Chhogalalji's* case (supra) which we have cited above and which, in our opinion, lays down the correct law on the subject. It is obvious that the object of s. 17 of the Andhra Pradesh General Sales Tax Act is to follow up the money due to the Sales Tax Department in the hands of either the assessee or any person who may be holding the money on behalf of the assessee. The section, however, does not empower the Sales Tax Department to follow the money in the hands of a *bona fide* transferee from the assessee even before the dues have accrued. There can be no doubt that the Sales Tax Authorities had the power to determine in a summary fashion as to whether or not the petitioners were holding the monies on behalf of the assessee, but the enquiry would be limited to this question only and cannot be projected further. Where a transfer is made by the assessee after the assessment order has been passed against him in favour of persons who are either relatives or friends of the assessee and the said transfer *prima facie* appears to be colourable or fraudulent, it is open to the Sales Tax Department to ignore such a transaction and proceed against the transferee on the basis that the transaction is a sham one and no title has in fact passed under the transfer. But this is quite different from proceeding against a transferee who has acquired an independent title under the transfer even before the assessment is made against the transferor. The Sales Tax Authorities under s. 17 of the Andhra Pradesh General Sales Tax Act can only determine the jurisdictional facts and cannot proceed beyond that. In *Katikara Chintamani Dora & Os.* v. *Guntreddi Annamnaidu & Ors*(1) it was ruled by this Court that a Tribunal possesses the power to determine a jurisdictional fact which gives the jurisdiction or empowers the Tribunal to try a certain issue. This, however, does not empower the Tribunal to be a judge in its own cause and determine or decide complicated questions of title.

In the special and peculiar facts of the present case which have been catalogued above, in our opinion, this is not a fit case in which the sales tax authorities can be allowed to hold that the deed of trust executed by the settlors was hit by s. 53 of the Transfer of Property Act. It may be noted that under s. 53 of the Transfer of Property Act if a transfer is made with intent to defeat or delay the creditors it is not void but only voidable. If the transfer is voidable, then the sales tax authorities cannot ignore or disregard it but have to get it set aside through a properly constituted suit after impleading necessary parties and praying for the desired relief. In *Chutterput Singh & Ors.* v. *Maharaj Bahadoor and others*,(2) the Privy Council observed as follows :

> "No issue was stated in this suit whether the transfers were or were not liable to be set aside at the instance of Dhunput under s. 53 of the Transfer for Property Act, and no decree has been made for setting them aside. Such an

(1) [1974] 2 S.C.R. 655. (2) L.R. 32 I.A. 1.

A issue could be raised and such a decree could be made only in a suit properly constituted either as to parties or otherwise."

To the same effect is the later decision of the Privy Council in *Zafrul Hasan and others* v. *Farid-Ud-Din and others*,(1) where Lord Thankerton made the following observations :

B "Further, under s. 53 the *wakfnama* would only be voidable at the option of the "person so defrauded or delayed" .... Until so voided the deed remains valid."

Lastly it was contended by counsel for the respondent that the liability of the appellant arose as early as 1966-67 and the Trust Deed came into existence on September 16, 1968. This being the case, it was stressed that Itikala Kollayya and the trustees could not be un-
C aware of the tax liability or the amount due at that time when the trust deed was executed. This tax liability was the first charge on the property and its sale proceeds. Therefore, the creation of the deed and subsequent sale of the property on January 10, 1971, for liquidation of the supposed debts of the trustees and other creditors was merely a device to evade the payment of arrears of sales-tax due to the Government. Our attention has been invited in this connection
D to the order dated November 13, 1972, of the Deputy Commercial Tax Officer. The contention is devoid of force. As rightly pointed out by Mr. Bhandare, when the impugned notice dated July 20, 1970, was issued to M/s. Uma Traders with copy to Itikala Kollayya Setty by the respondent, the tax had not been quantified; the assessments were made subsequently. So long as the tax had not been assessed and qualified, it could not be said that any specific debt due to the
E Revenue from the assessee had come into existence. The question of such a non-existent debt, being a first charge on the property at the date of the execution of the trust deed, did not arise. The contention of the respondent on this score is, therefore, overruled.

In this view of the matter, we feel that it cannot be said in the present case that the trust deed executed by the settlors is *prima facie* fraudulent or a colourable transaction. It will, however, be open to
F the Sales Tax Authorities to avoid the document by bringing a properly constituted suit, if so advised. We could also like to make it clear that any observation regarding the validity of the document that has been made in this case by us will be confined only to the materials that have been placed before us and will not prejudice the merits of either party in a suitable action which may be brought.

G For these reasons the appeal is allowed, the judgment of the High Court is set aside and the notices issued by the respondent against the appellants are hereby quashed. We would, however, direct that the sum of Rs. 31,100/- which has been deposited by the appellants in Union Bank. Kurnool, under the directions of this Court, would not be refunded to the appellants before the expiry of three months from to-day's date. In the circumstances of this case, we make no
H order as to costs in this Court.

P.H.P. *Appeal allowed.*

(1) A.I.R. 1946 P.C. 177.