

TYSER, C.J.
&
FISHER, J.
1916

July 9

[TYSER, C.J. AND FISHER, J.]

ALFREDOS E. CHRISTODOULIDES

v.

MUSTAFA MEHMED PASHA.

FRAUDULENT TRANSFERS AVOIDANCE LAW, 1886—SALE OF IMMOVEABLE PROPERTY BY PUBLIC AUCTION—REGISTRATION IN THE NAME OF INFANT SON OF HIGHEST BIDDER.

The Plaintiff obtained judgment against the Defendant for £33 11s. 0cp. and costs and on sale of the Defendant's immoveable property in execution of the judgment recovered the sum of 5s. 5cp. Subject to that the judgment remained unsatisfied. Subsequently at a sale of certain immoveable property the Defendant was the highest bidder and paid the purchase money.

At his request the name of his infant son was written down as purchaser and the property was registered in the son's name.

The Plaintiff applied to the District Court to have the registration set aside under the Fraudulent Transfers Avoidance Law, 1886. The District Court dismissed the application.

HELD (allowing the appeal): *That the transaction was a fraudulent gift within the meaning of the Fraudulent Transfers Avoidance Law, 1886, and that the Plaintiff was entitled to have the registration in the name of the infant son set aside and the property registered in the name of the Defendant.*

The facts sufficiently appear from the head-note.

Alexandrides for the Appellant.

My application was for an order to cancel the registration in the name of the son of the Defendant of property bought with money belonging to the Defendant. The District Court held that the property never having belonged to the Defendant it could not be the subject matter of a gift by him. The provisions of the Fraudulent Transfers Avoidance Law, 1886, are applicable in a case such as this.

Izzet Effendi for the Respondent, as Defendant and as guardian of his infant son.

The name of the son was put as purchaser at the time of the sale, so there can be no question of fraudulent transfer by the Defendant who never possessed the property. There is no evidence that the property was bought with the Defendant's money. This is not an application to set aside a gift of money.

Alexandrides in reply. It is practically admitted that the money was the Defendant's.

Judgment: THE CHIEF JUSTICE: It must be taken that it was the Defendant's money that was paid for the property, and it follows from his request to have the child's name written down as purchaser and from the subsequent proceedings that the Defendant's intention

was to prevent his creditor from getting at the property. It is said that the Defendant never had the property and therefore could not have made a fraudulent assignment of it. He had, however, rights under the contract with the auctioneer and he gave those rights to his son. Registration was merely a procedure required by the law to perfect that gift. The gift is fraudulent under the Fraudulent Transfers Avoidance Law, 1886, and must be set aside, and the registration as the carrying out of the gift must be set aside. There can be little doubt that the right under the contract is "property" within Sec. 2 (2) of the law. It is property which has a value and can be sold and it does not matter whether, to give effect to the sale, there has to be one or two registrations. It is also property which can be transferred or assigned gratis.

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The appeal must be allowed and the application to have the registration in the name of the son set aside and the property registered in the name of the Defendant must be granted.

. PUISNE JUDGE: On the hearing of the application before the District Court neither of the Respondents appeared or were represented, and there is no real dispute as to the facts. The question is whether in the light of these facts, the registration of the property in the name of the son constituted a gift of the property within the meaning of the Fraudulent Transfers Avoidance Law, 1886. The intention of that enactment was undoubtedly to prevent fraud, or rather to prevent creditors being injured by the fraud of debtors, and it must be construed to give effect to that intention, so far as possible. The facts shew a series of acts on the part of the Defendant by which he, at his own expense, procured the registration of the property in the name of his son.

In my opinion there was a "gift" of the property within the meaning of the section referred to.

Appeal allowed with costs.

The case in the matter of a Petition by Yanni Nicola and another, and in the matter of the Malicious Injury to Property Laws, 1894 and 1909 reported in pages 83-84 of the original edition, is no longer of any importance.