

Ram Gopal and Ors. Vs. Official Receiver, Judge's Court and Ors.

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Court : Allahabad

Decided On : Feb-07-1950

Reported in : AIR1950All479

Judge : Wali Ullah, J.

Acts : [Provincial Insolvency Act, 1920](#) - Sections 54 and 54(1)

Appeal No. : Second Appeal No. 21 of 1945

Appellant : Ram Gopal and Ors.

Respondent : Official Receiver, Judge's Court and Ors.

Advocate for Def. : M.L. Chaturvedi, Adv.

Advocate for Pet/Ap. : Shambhu Nath Seth, Adv.

Disposition : Appeal dismissed

Judgement :

Wali Ullah, J.

1. This is an appeal against the appellate order of the Court below by which a certain sale deed of zamindari property has been annulled as against the sons of one Manik Chand who were adjudged insolvents by the Insolvency Court.

2. The appellants, Ram Gopal and others, purchased zamindari property in three villages, viz., Imlani, Ekri and Mai, under a sale deed executed on 7th January 1938, by Kewal Ram, Jai Kishan Das and the sons of Manik Chand. Thereafter on 7th April 1938, Ganga Prasad, a creditor of the sons of Manik Chand, applied for their insolvency. On 6th March 1941, the sons of Manik Chand were adjudged insolvents. This order of adjudication was affirmed in appeal on 16th December 1942. On 20th September 1943, the receiver in insolvency applied to the Insolvency Court for annulment of the sale deed executed on 7th January 1938. This application was made Under Section 54, Provincial Insolvency Act, on the ground that the creditors were shown undue preference by reason of the sale effected in their favour.

3. On a consideration of the matter, the Insolvency Judge annulled the sale deed dated 7th January 1938, in its entirety i.e., as against Kewal Ram and Jai Kishan as well.

4. On appeal, the District Judge varied the order passed by the Insolvency Court in this respect that the sale deed was declared invalid only as against the sons of Manik Chand. The vendees under the sale deed have now come up in second appeal to this Court.

5. Learned counsel for the appellants has contended, in the first place, that the petition for insolvency was filed more than three months after the sale deed sought to be avoided. Next, it has been contended that Section 54(1), Provincial Insolvency Act, does not apply to a case of secured creditors and as the vendees were secured creditors in respect of village Ikri, which already stood hypothecated to them, the entire sale deed in favour of the vendees including the properties in villages of Imlani and Mai, could not be avoided or annulled in these proceedings.

6. With regard to the question whether the application for adjudication was made more than three months after the sale deed, it seems to me clear that the provisions of Section 54(1), Insolvency Act, have been complied with. In this case the petition for insolvency was presented on 7th April 1938, which was, to my mind, within a period of three months after the date of the sale deed. It seems to me, therefore, that there is no force in this contention. The expression 'any

creditor' in Section 54 has no doubt been interpreted in some cases to mean a creditor other than a secured creditor. The reason is obvious that in a case where the property is sold to a creditor who already occupies the position of a secured creditor there can be no question of showing any preference or undue preference to him in so far as the realisation of his debt is concerned. He already enjoys an advantage in respect of the realisation of his debt over other simple creditors of the debtor by reason of the fact that he is a secured creditor i.e., he holds a security over certain items of property. In the present case, however, two of the items of property viz., villages Imlani and Mai were not hypothecated to the vendees prior to the date of the sale deed. The sale in respect of these two villages can, therefore, be impugned under the provisions of Section 54 of the Act.

7. The question then arises whether the single transaction of sale dated 7th January 1938, can be split up or separated into two transactions : (i) dealing with village Ekri in respect of which the vendees occupy the position of secured creditors and (ii) relating to the other two villages which were not hypothecated to them from before. In the case of *Jadu Nath v. Manindra Nath*, 27 C.W.N. 816 : (A. I. R. (10) 1923 Cal. 689), it has been held by the Calcutta High Court that there is a distinction between a creditor and a secured creditor so far as the application of Section 54, Provincial Insolvency Act, is concerned. If a transfer is made in favour of secured creditors, such a transfer cannot be attacked on the ground that the transferor gave a preference to those creditors as against other creditors. Secured creditors are entitled to be paid to the full extent of their debts secured in preference over other creditors. Section 54, therefore, has no application to the case of transfers in favour of secured creditors. In view of the decision of the Judicial Committee of their Lordships of the Privy Council in the case of *Chidambaram Chettiar v. Srinivasa Sastrial*, 20 C. L. J. 571 : (A. I. R. (1) 1914 P. C. 137), it is clear that the deed of transfer, in a case like the present, cannot be separated into two transactions, one dealing with village Ekri in respect of which the vendees held the position of secured creditors and the other relating to the other two villages which were not hypothecated to them from before. The entire sale deed must stand or fall as one entity. In this case the entire sale deed and not only a part of the sale deed must be annulled as has been done by the lower appellate Court. It seems to me that there is no force in either of the two

contentions urged by the learned counsel for the appellants.

8. I dismiss the appeal with costs.

9. Leave to appeal under the Letters Patent is refused.

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