

Mt. Bashiran Vs. B. Moti Ram

Mt. Bashiran Vs. B. Moti Ram

SooperKanoon Citation : sooperkanoon.com/470897

Court : Allahabad

Decided On : Feb-20-1933

Reported in : AIR1933All431

Appellant : Mt. Bashiran

Respondent : B. Moti Ram

Judgement :

Niamatulah, J.

1. This purports to' be a second appeal from an order passed, by the learned District Judge of Cawnpore in the exercise of his appellate: jurisdiction as Judge of the Court of Insolvency. It was passed on appeal, from an order -of the Subordinate Judge-of that district exercising the powers, of an Insolvency Court. A preliminary question was raised by the learned advocate for the respondent that no second appeal lies. As this Court has. wide powers of revision in cases arising: under the Provincial Insolvency Act, the memorandum of appeal can be-treated as an application for revision,, assuming no second appeal lies. We-do not consider it necessary to decide-whether a second appeal is maintainable, as in view of the questions raised this Court has power to hear them, on revision. In these circumstances we prefer to dispose of the case on its merits.

2. The appellant is the wife of one Slier Mohd Khan. By a deed, dated 31st March 1927, he transferred practically the whole of his unincumbered, property to the

appellant in lieu of her dower. It is not disputed that he was indebted to numerous creditors to the extent of nearly Rs. 20,000. One of those creditors applied on 27th June 1927 that Slier Mohammad Khan be adjudged., insolvent. He was so adjudged on 7th January 1928. The official liquidator subsequently applied for annulment of the deed of transfer dated 31st March. 1927 in favour of the appellant on the allegation that the same had been executed with a view to giving preference to one of the creditors and was fraudulent. The Court of first instance held, on the evidence produced in the case, that Sher Mohammad Khan, acted fraudulently in transferring his property to Ms wife to the detriment of other creditors. Accordingly he declared the transfer in favour of the appellant to be void. The appellant preferred an appeal to the learned District Judge. It was argued before him that the Court of first instance had approached the case from an erroneous stand point in that it threw the whole onus on the appellant. The learned District Judge examined all the circumstances of the case and upheld the decision of the Court of first instance. In doing so, we are satisfied, that he allocated the burden of proof strictly in accordance' with the provisions of Section 54, Insolvency Act. He referred to a number of circumstances and inferred from them that the object of Sher Mohammad Khan in executing the deed of 31st March 1927 in favour of the appellant was to give her preference over the principal creditor Asa Ram. Having arrived at that conclusion, the learned Judge presumed that the transfer was fraudulent.

3. There is no dispute that the transfer in question was made within three months before the date of the application for insolvency. It has been found by both the Courts below that Asa Ram held a decree against Sher Mohammad Khan for Rs. 16,000 on the date of the aforesaid transfer. This decree was one for sale of mortgaged property belonging to the insolvent. Asa Ram had another mortgage on which Rs. 4,000 was due. In a suit brought by the daughters of the insolvent three-fourths of the mortgaged property was found to belong to them. The remaining one fourth was wholly inadequate to satisfy Asa Ram's debt which could be recovered from other property of the insolvent. No demand was ever made by the appellant in respect of her dower debt. It does not appear whether any part of it was prompt. In view of these circumstances, coupled with the fact that the transfer is in favour of the wife of the insolvent, it was permissible for the Courts below to infer that the

dominant motive underlying the transfer was to give preference to a creditor in whom the insolvent was greatly interested.

4. The learned Counsel for the appellant has argued that the burden of proving the fraudulent character of the transaction lies on the official receiver. We do not think that this contention is sound. Section 54, Provincial Insolvency Act, provides that every transfer of property made in favour of any creditor with a view to giving that creditor a preference over the other creditors shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the receiver and shall be annulled by the Court. It is clear from this rule that in case it is established by the official receiver that the object of the insolvent in making the transfer. was to give preference to one of the creditors, the fraudulent character thereof is to be presumed. It is true that the mere fact that preference incidentally resulted from the transfer is not enough to attract the application of the ' section. What is required is to prove that the dominant motive or object of the transfer was to give preference to such creditor. If this conclusion is reached, the fraudulent character of the transaction is to be presumed. The learned, counsel for the appellant has referred us to several cases in which this question has been discussed. It is not necessary for us to examine them in detail, as in our opinion none of them lays down any rule different from what we have held it to be. The language of the section itself is quite unambiguous and creates no difficulty. As to whether the object of the transfer was to give preference to one of the creditors is a matter of inference from the circumstances of each case and is essentially a question of fact.

5. In the case before us the dominant motive underlying the transfer having been found to be to give preference to one of his creditors, the transfer was rightly presumed to be fraudulent. The learned District Judge was of opinion that the insolvent could have rebutted the presumption of fraud but he' adduced no evidence. It is not suggested that he had not been afforded sufficient opportunity to lead evidence in rebuttal. In these circumstances, we think that the view taken by the learned District Judge was in conformity with the rule laid down in Section 54, Provincial Insolvency Act. This appeal must therefore fail and is dismissed with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com