

Bappu Reddiar Vs. the Official Assignee

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Court : Chennai

Decided On : Apr-25-1919

Reported in : (1919)37MLJ246

Appellant : Bappu Reddiar

Respondent : The Official Assignee

Judgement :

1. After the order of remand was made by this Court on 26-3-1918 giving an opportunity to the transferee, the transfer in whose favour is impeached in this case under Section 37 of the Provincial Insolvency Act, both the parties adduced evidence relevant to the matter and we have now got to decide on that evidence whether there is a case under Section 37. A ruling of this Court in *Official Assignee of Madras v. Mehta and Sons* : (1919)36MLJ190 and another of the Calcutta High Court in *Nripendra Nath Sahu v. Ashutosh Ghose* I.L.R. (1915) Cal 640 lay down clearly after a full discussion of the authorities that it is for the receiver who is impugning a transaction as amounting to fraudulent preference within the meaning of Section 37 of the Provincial Insolvency Act to prove the allegation. No doubt in the order of remand, the learned Judges seem to have taken the opposite view. This is a question of law and we agree with the decisions already mentioned

2. The facts of this case are that Nagalingam Pillai's creditors' petition to declare him insolvent was filed on the 27th January 1914 and the transfer which is a deed of sale in favour of the appellant, one of the creditors, was made on the 11th

December 1913, that is, within three months of the Insolvency. The consideration for the sale was Rs. 1,000 out of which Rs. 500 was paid towards the debt due to the vendee himself and out of the balance, Rs. 400 was paid to a relation of the respondent's witness No. 2 who had a mortgage on another property of the insolvent and Rs. 100 to another creditor who had a mortgage. These are practically all the facts we have before us, to find whether the case comes under Section 37.

3. The law lays down that it is not sufficient to prove that the transaction which is impugned took place within three months of the insolvency and that in fact it had the effect of giving preference to the transferee, but it has to be shown positively that the transfer was made with a view to prefer the creditor to whom the transfer was made. The burden lies as pointed out in the decisions, on the Receiver or the creditors who impugn the transfer to make out, that the transfer was made with a view to give preference. Unless such an intention is made out, the mere fact that the transfer would have such an effect is not sufficient to bring the case within the scope of the law. As we have suggested, beyond the fact that the transfer was made within three months prior to the insolvency and that it had the effect of paying the transferee in full, while the other creditors would probably receive much less than their debt, there is nothing on which we can hold that the transfer was made with the intention contemplated by law. It is not suggested that the consideration for the transfer was not the proper value of the property. The transferee, it may be mentioned, is not a relation of the insolvent, in which case the Court might be inclined to view the transfer with suspicion. And there is some evidence, though it cannot be said to be of a very cogent character, that the transferee had been pressing for payment of his debts and that it was in pursuance of that demand the sale was effected. Under the circumstances, we cannot uphold the view taken by the learned District Judge that the case fell within the purview of Section 37 of the Insolvency Act.

4. The learned pleader for the respondent before us suggested that his client was misled by the observation in the previous order of the High Court as to the burden of proof. But there is nothing to show that the respondent was in any way prevented from adducing any evidence either at the original trial or after remand.

In fact after the order of remand, he did adduce some evidence and we do not think that we can entertain the suggestion that he would have adduced better evidence if he did not think that the burden lay on the other side. It was his duty to have adduced the best evidence he had, either to prove that the transaction amounted to fraudulent preference or to rebut the proof of the other side that the transfer was bona fide and made for valuable consideration.

5. In the result, we set aside the order of the District Judge and dismiss the petition with costs here and in the Court below.

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