

Gopalakrishnan Vs. M.A.V. Veerappa Chettiar (Died) and ors.

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Court : Chennai

Decided On : Jun-11-1984

Reported in : AIR1986Mad274

Judge : Venkataswami, J.

Acts : [Provincial Insolvency Act, 1920](#) - Sections 37 and 43

Appeal No. : S.A. No. 745 of 1979

Appellant : Gopalakrishnan

Respondent : M.A.V. Veerappa Chettiar (Died) and ors.

Advocate for Def. : T.R. Rajagopalan, Adv.

Advocate for Pet/Ap. : I. Mahaboof Sheriff, Adv.

Judgement :

1. The second defendant in O.S. No. 579 of 1970 on the file of the Court of the District Munsif, Pudukottai is the appellant. The first respondent, who died pending disposal of the second appeal, was the plaintiff. The suit filed by him was for partition by metes and bounds and separate possession of his one half share in the suit property with mesne profits.

2. The brief facts relating to the suit areas follows: Originally the suit property belonged to one Krishnaswami Chettiar and others Subsequently, one S. K.

Ramaswami Chettiar, son of Krishnaswami Chettiar, and his agnate Nagarathnam Animal, became the owners of the suit properties, the former having two-third share and the latter one-third share. In I.P. 6 of 1956, Sub-Court, Pudukottai, the said Ramaswami Chettiar was adjudged as an insolvent by an order dt. 12-9-1956 and all the properties including the mortgaged property vested with the Official Receiver. Tiruchirapalli. In the course of the administration of the estate of Ramaswami Chettiar, the Official Receiver sold one-third share mortgaged to the plaintiff subject to mortgage on 29-1-1966 and pursuant to the sale and after confirmation, a sale certificate was also issued to the plaintiff on 16-6-1969. On 17-9-1969 the plaintiff obtained symbolical delivery of the one-third share through E.A. 146 of 1.969 in I.P. 6 of 1956. All steps taken by the plaintiff to get separate possession of the property purchased by him by negotiations proved futile by reason of non-co-operation of the defendants, who are the legal representatives of the deceased Ramaswami Chettiar. Therefore, the plaintiff was obliged to file the suit for partition and separate possession of his share in the suit property.

3. Defendants 1 and 2 are the sons, third defendant is the wife and 4th defendant is the daughter of the deceased Ramaswami Chettiar. The suit was resisted inter alia contending that the sale by the Official Receiver and all the subsequent proceedings pursuant to the sale are totally unsustainable in law, and, therefore, the plaintiff derived no title to the suit property. The basis for the above contention is that the adjudication was subsequently annulled under S. 43 of the Act, by the Insolvency Court on 10-7-1962 and while making such an order of annulment the Court failed to make an order regarding the continued vesting of the property for the benefit of the creditors with the Official Receiver. The order dt. 2-8-1962, of the Court revesting the properties is without jurisdiction. The failure to make a simultaneous order to continue the vesting with the Official Receiver had resulted in automatic vesting of the properties with the insolvent, and, therefore, the subsequent sale by the Official Receiver will have no effect at all.

4. The trial Court, on a consideration of the pleadings, arguments and the relevant documents, came to the conclusion that the sale by the Official Receiver was true, valid and binding on the defendants and that the Official Receiver had power to sell the suit property. Consequent to the said findings the suit was decreed as

prayed for.

5. The second defendant felt aggrieved by the judgment and decree of the trial Court and filed A.S. 169 of 1977 on the file of the District Court, Pudukottai. Before the lower appellate Court, the same arguments were pressed into service and the appellate Court, in its considered judgment, overruled the same and consequently confirmed the judgment and decree of the trial Court. It is under these circumstances, the second defendant has filed the present second appeal against the concurrent judgments and decrees of the Courts below.

6. The substantial question of law that was framed at the time of admission of the second appeal is as follows -

'Whether the Courts below committed any illegality in ignoring the annulment order dt. 10-7-1962, and in upholding subsequently the vesting order dt. 2-8-1962 and on other grounds stated in para 12 of the grounds of appeal?'

7. Mr. I. Mahaboob Sheriff, learned counsel appearing for the appellant, contended that the subsequent order of vesting by the Insolvency Court will not help the plaintiff to sustain the sale by the Official Receiver and, therefore, the sale, as well as all further proceedings, must be deemed to be non est in law. It is the contention of the learned counsel that while passing the annulment order on 10-7-1962, the Insolvency Court failed to make simultaneously an order vesting the properties in the Official Receiver and the subsequent vesting order dt. 2-8-1962, vesting the properties in the Official Receiver with retrospective effect is not sustainable in law.

8. Mr. T. R. Rajagopalan, learned counsel appearing for the plaintiff first respondent (now represented by respondents 5 to 8 who are brought on record as legal representatives on 3-9-1982), contended that after the order of annulment the insolvency proceedings will not automatically come to an end and if by oversight the Court admitted to pass necessary orders for the protection of the creditors, there is nothing in the Insolvency Act disabling the Court to pass an order subsequently to correct the mistake to protect the interests of the creditors. It is the contention of the learned counsel for the contesting respondents that the

Courts below are perfectly right in decreeing the suit for partition.

9. It is seen from the records that the order of annulment was passed under S. 43 of the Provincial Insolvency Act, on the failure on the part of the insolvent to apply for discharge. Though it is expected of the Insolvency Court to pass simultaneously an order regarding vesting of properties in the Official Receiver, if necessary, along with the order of annulment under S. 37, that does not mean that the Court is powerless to rectify the mistake by passing an order subsequently vesting the properties in the Official Receiver to protect the interests of the creditors. Mr. T. R. Rajagopalan relied on the following reported judgments in support of his contention - Chouthmal v. Jokhi Ram, : AIR1933 Pat84 ; Ishar Das v. Mt. Fatima Bibi, AIR 1934 Lah 468; Abdul Latif v. J. R. Percival : AIR1936 Cal573 ; Baluswami v. Official Receiver, Madurai, AIR 1938 Mad 752; Veerayya v. Kotireddi, AIR 1941 Mad 588. It may be mentioned here that in the decision in Baluswami v. Official Receiver, Madurai, AIR 1938 Mad 752, Pandrang Row, J. after referring with approval the earlier three judgments referred to above, has taken the view that the order, vesting the properties in the Official Receiver even if passed subsequent to the order of annulment is valid and the same cannot be challenged because it was not passed simultaneously with the order of annulment but some time later.

10. In Ishar Das v. Mt. Fatima Bibi, AIR 1934 Lah 468, it was held as follows: -

'If a debtor fails to apply for an order of discharge within the period specified by the Court, or having made such application fails to appear on the date of hearing, the adjudication does not stand cancelled automatically but the Court must make an express. order annulling the order of adjudication.....Where an In solvency Court while passing an order under S. 43, annulling adjudication has omitted to pass an order under S. 37 directing that the property of the insolvent shall vest in the Official Receiver for the benefit of the general body of creditors, it has the power to add it at a later stage. An Insolvency Judge possesses the inherent powers of a Civil Court to make all orders necessary for the ends of justice and prevent abuse of the process of Court.'

Similar was the view taken by the Patna High Court and the Calcutta High Court, reference to which had already been made. The principle laid down in *Baluswami v. Official Receiver Madurai*, AIR 1938 Mad 752 has subsequently been followed in *Chidelia Veerayya v. Kallam Kotireedi*, AIR 1941 Mad 588.

11. In *Chouthmal v. Jokhi Ram*, : AIR1933 Pat84 , a Division Bench of that High Court at page 86 has observed as follows:-

'In this particular case an order vesting the property in the receiver was passed on 1st August 1928, about six weeks after the order of annulment. The question is - Is this order valid and operative' If so, the insolvency proceedings has not come to an end, though the protection afforded to the debtor has been, taken away from him. Sri Sultan Ahmed has contended, as I have said, that the order contemplated in the last clause of S. 37 must be passed simultaneously with the order of annulment, and. if it is not done, the Court is deprived of its powers and no subsequent vesting order can be of any avail. I cannot accept it and see no reason why the order cannot be passed later on. To hold otherwise will lead to serious injustice, as it would have done in this case and this the legislature could never have contemplated. It is to be noted that in the case before us the order of adjudication was made on appeal by this Court at the instance of one of the creditors (appellant in Miscellaneous appeal No. 210 of 1930) and the annulment was made on account of the default of the insolvent behind the back of the creditors, who were vitally interested in the, administration of the insolvent's estate.

The order of annulment, on failure to apply for discharge, is intended to punish the insolvent by withdrawing from him the protection which he gets by the order of adjudication and if, while passing the order of annulment the Court by some oversight or other fails to pass orders for the protection of the creditors, there is no reason why the Court cannot do so when the mistake is pointed out by it There is nothing in the Insolvency Act to prevent it. It is not correct to say that after the order of annulment the insolvency proceedings comes to an end ipso facto. This very S. 37 provides that all the previous acts of sale or disposition of property, etc., will hold good. Cases may arise in which the direction and orders of the Court may be necessary for the purpose of doing acts to complete the titles of the

transferees, etc., or for protecting their interest and there is no reason to hold that the Court after the order of annulment ceases to have jurisdiction in the insolvent's estate. The cases which I have referred above and on which reliance has been placed on behalf of the respondents are of no use to us. In none of these cases was any order vesting the property in any other person passed by the Bankruptcy Court, even on a subsequent date and, therefore, the legal consequences followed and the property was held to be vested in the insolvent. None of these cases can be an authority for the proposition that the order contemplated in the last clause of S. 37 cannot be passed some time after the order of annulment.'

In Abdul Latif v. J. R. Percival : AIR1936 Cal573 , a learned single Judge of that High Court following the decision in Chouthmal v. Jokhi Ram, AIR 1933 Pat84, has held as follows : -

'The vesting of the property in a person appointed by the Court as provided in S. 37 of the Act is designed to carry this object into effect S. 37 merely states the effect of an annulment and an adjudication can be annulled under a variety of circumstances which I have indicated above. The insolvency proceedings do not automatically terminate with the annulment, and it cannot be said that by an order passed under S. 43 of the Act the Judge loses seisin of the matter and cannot thereafter make any order in those proceedings.'

12. In view of these clear pronouncements there can be little doubt that the Courts below are right in decreeing the suit, negating the technical plea raised by the defendants.

13. Mr. Mahaboob Sheriff, however, relied on a Full Bench decision of this Court, reported in Subbiah Gounden v. Ramaswami, Gounden, : AIR1954 Mad604 . On a perusal of the judgment, it is clear that the point that directly arises in this case was not the point for consideration in the said Full Bench case. The learned counsel wanted to rely on the following observations in the Full Bench judgment : -

'Once the adjudication was annulled without imposing any conditions, it must be taken that there was no insolvency at all and by reverter under S. 37 of the Provincial Insolvency Act, the prior state of things was restored and the property

vested in the insolvent with retrospective effect. The effect of annulling the insolvency was to wipe out the effects of insolvency altogether and to vest the property in the insolvent debtor, subject however to the exceptions provided in S. 37.'

The learned counsel contended that applying the above principle to the facts of the instant case, it must be held that the order of annulment had the effect of restoring the properties in the insolvent with retrospective effect and the subsequent order of the Insolvency Court, vesting the property in the Official Receiver with retrospective effect, has no legal sanction. I am unable to agree with the contention of the learned counsel for the appellant. As pointed out earlier, on the facts, the Full Bench had no occasion to consider whether the Insolvency Court can pass an order subsequent to the annulment to safeguard the interests of the creditors, vesting the properties in the Official Receiver, and, therefore, the said observations cannot be pressed into service to sustain the argument, particularly in the light of the other judgments of this Court as well as other courts to the effect that there can be an order of vesting the properties in the Official Receiver subsequent to the order of annulment to protect the interests of creditors. The reasons for taking such a view had been given in the decisions to which reference had already been made.

14. Mr. Mahaboob Sheriff also relied on the judgment reported in *Sarjubai v. Cooperative Society, Manpa*, . Though this judgment appears to support the contention of the learned counsel for the appellant, in view of the fact that there are judgments of this Court directly taking a different view, it is not possible for me to accept the view taken in *Sarjubai v. Co-operative Society, Manpa*; .

15. No other point was raised and argued In the light of the above discussions, I am of the view that the judgments and decrees of the Courts below are perfectly in accordance with the principles laid down by this Court and do not call for any interference in this second appeal. Consequently, the second appeal fails and it is dismissed. However, there will be no order as to costs.

16. Appeal dismissed.

