

The Official Assignee of Madras and anr. Vs. the Official Assignee of Rangoon

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Court : Chennai

Decided On : Dec-13-1923

Reported in : AIR1925Mad141; 79Ind.Cas.910; 83Ind.Cas.174

Appellant : The Official Assignee of Madras and anr.

Respondent : The Official Assignee of Rangoon

Judgement :

Schwabe, C.J.

1. This is an application to review and rehear O.S.A. Nos. 27 and 28 of 1918 and further to declare that the agreement to sell certain properties of the insolvent by the Official Assignee of Rangoon, dated the 25th February, 1918, and the sale of the 29th May, 1919, in favour of the Zemindar of Naikarairathi are void as against the creditors. This Court has in C.M.P. No. 3032 of 1922 passed orders with the result that the Insolvency in Madras which had previously been annulled has revived. The orders to which O.S.A. Nos. 27 and 28 of 1918 referred were orders of Bakewell, J., refusing in effect to stay the sale of this property, and they were passed and confirmed by this Court in order that the whole matter might go to Rangoon and be decided there as the whole Insolvency was in effect then transferred to Rangoon.

2. Under the circumstances, the right order is that those two appeals be revived and that the application, dated the 14th March 1918 be remanded to the Insolvency Court here at the same time. The real question in issue is whether or not this sale is void as against the Official Assignee in Insolvency. It is alleged that the properties sold were grossly under-valued ; it is alleged that the sale is fraudulent and it is alleged that the Official Assignee who effected the sale himself acted fraudulently in the matter. All those matters will be questions to be considered by the Court that hears this petition.

3. It is not possible for us to hear and determine these matters, because we are sitting as an Appellate Court and we have at present no order of the Original Court in Insolvency expressing the views of that Court as to whether this sale is good or bad, and when sitting as an Appellate Court in Insolvency we do not as a rule hear matters except by way of appeal from the Original Side sitting in Insolvency. Now it is argued that the Insolvency Court here has no jurisdiction to hear and determine this matter and that it is necessary that the matter should be determined by a suit and not on motion in Insolvency. I do not agree with that view. I think that it has jurisdiction under the combined effect of Sections 7 and 36 of the Presidency Towns Insolvency Act; and the rule in England, though there has been some divergence of opinion on this point there, is to be found clearly stated in reference to cases of this kind in *In re Motion Mark v. Davis* (1874) 9 Ch. 192 thus:

If a Court of Bankruptcy finds property of the bankrupt in the hands of a purchaser with notice of fraud, to whom it has come by a fraudulent conveyance from an assignee in bankruptcy, it may well hold that it has power to order such purchaser to reconvey and revert in a substituted assignee, the property so fraudulently acquired.

4. It will be a saving of costs to everybody concerned to refer, except so far as we have disposed of it, this C.M.P. No. 3033 to the Insolvency Court. As far as I understand the case is quite ready for trial and in fact it was proposed to proceed with the matter here to-day. It will be open to the Judge sitting in Insolvency to make any order which he may think fit as to the date of trial or production of documents or anything of that kind. The costs of this application will be costs in the

motion in the Insolvency Court. The Official Assignee's costs of this C.M.P. No. 3033 will, in the first instance, come out of the estate, and the rest will follow the event in the Insolvency Court.

5. No order on the other petitions filed with this viz., 1868, 1933, 1943, 2016, 2185 and 1930 of 1923 without prejudice to any orders that may be passed on them on the Original Side.

6. I sanction the receipt by the Bench Clerk who is in charge of this case of any remuneration that the Official Assignee may think proper for work done by him out of Office hours. If all parties agree that they prefer this matter to be determined by a suit on the Original Side rather than by garnishee proceedings in Insolvency it is open to them to apply.

Ramesam, J.

7. I agree.

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