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Court : Chennai

Decided On : Oct-19-1945

Reported in : (1945)2MLJ557

Appellant : Pathi Gundeppa

Respondent : The Official Receiver

Judgement :

Alfred Henry Lionel Leach, C.J.

1. On the 10th November, 1930, two partners in a cloth business, named Gaveppa and Rudrappa respectively, were adjudicated insolvents in the Court of the District Judge of Bellary. They had also carried on a motor bus business. On the 3rd April, 1930, Gaveppa sold four motor buses to the appellant for Rs. 10,000 and on the 29th April, 1930, he sold two others for Rs. 2,500. On the 28th April, 1930, he sold a motor shed to the appellant for Rs. 170. On the 5th April, 1935, the Official Receiver filed an application (I.A. No. 77 of 1935) for an order setting aside the sales of the motor buses on the ground that the transaction constituted fraudulent preferences. On the nth February, 1935, he filed an application (I.A. No. 86 of 1935) for an order setting aside the sale of the shed on the same ground. The District Judge dismissed the applications, but on appeal to this Court they were allowed and the transactions set aside by a judgment dated the 18th March, 1942.

2. On the 17th August, 1943, the Official Receiver filed I.A. No. 77 of 1943, in which he asked for an order directing the appellant to pay mesne profits in respect of the shed at the rate of Rs. 12 per mensem from the date of the alienation. On the same date he filed another application (I.A. No. 178 of 1943) asking the Court to pass an order directing the appellant to pay into Court Rs. 2,500, the price of the two buses sold on the 29th April, 1930 (he had already paid Rs. 10,000, the price of the four buses first sold) and interest at 12 per cent, on Rs. 10,000 from the 3rd April, 1930, and at the same rate on Rs. 2,500 from the 29th April, 1930. The appellant opposed these applications on the ground that they did not lie, that they were barred by the doctrine of res judicata and that they were out of time. The plea of res judicata was based on the fact that in his application asking for declarations that the alienations were void on the ground that they constituted fraudulent preferences the Official Receiver had also asked for mesne profits and interest but no order was passed on these prayers either by the District Court or by this Court on appeal.

3. The District Judge held that the applications did lie and that the doctrine of res judicata did not operate. He did not, however, deal with the question of limitation. Holding that the applications lay he granted mesne profits in respect of the motor shed at the rate of Rs. 12 per month from the 11th February, 1935, the date on which the Official Receiver applied for an order under Section 54 of the Provincial Insolvency Act in respect of that alienation and interest on Rs. 10,000 and Rs. 2,500 at six per cent, from the 5th February, 1935, the date on which the Official Receiver applied for an order in respect of the alienation of the buses.

4. In this Court the learned advocate for the appellant has conceded that the Court has power to order payment of mesne profits and of interest, but he says that the District Judge erred in giving mesne profits and interest from the dates of his application under Section 54. He contends that the law of limitation applies and that in respect of mesne profits he can only recover the amount of Rs. 12 per mensem for three years prior to the 17th August, 1943, and interest on Rs. 10,000 and Rs. 2,500 for six years prior to that date. In respect of the mesne profits he says that Article 109 of the Limitation Act applies and in respect of interest, Article 120. He further contends that the District Judge erred in rejecting the plea of res

judicata.

5. We will deal first with the question of res judicata. The District Judge rejected the plea on the ground that his predecessor and the High Court had not considered the question and therefore it must be assumed that it was the intention of the parties to have the question of mesne profits and interest decided at a later stage. As the District Judge who heard the applications under Section 54 dismissed them, the question of mesne profits and interest did not arise. In this Court the only question was whether the transactions amounted to fraudulent preferences and very properly the Court did not enter into a discussion of the amount which the Official Receiver was entitled to recover from the appellant. It was obviously the intention that any further questions should be first decided by the Insolvency Court. We agree with the District Judge in holding that there is no substance in the plea of resjudicata.

6. The appellant is on much better ground with regard to his plea of limitation. In Muthusami v. Official Assignee, Madras : (1936)71MLJ289 , a Full Bench of this Court held that an application under Section 7 of the Presidency Towns Insolvency Act is equivalent to a suit for the purposes of Section 3 of the Indian Limitation Act which applies the articles of the Act to all suits. That was a case under the Presidency Towns Insolvency Act. A mortgagor was adjudicated insolvent in the month of February, 1925. In the month of March, 1931, the Official Assignee applied under Section 55 of the Presidency Towns Insolvency Act for an order setting aside the mortgage. His application was granted in February, 1932, and in December, 1934, he applied for an order calling on the mortgagee to account for the rents and profits which he had received from the mortgaged property. The Court held that the mortgagee was liable for mesne profits only for the period of three years immediately preceding the Official Assignee's application. That decision was under the Presidency Towns Insolvency Act but obviously the same principles must apply to similar applications under the Provincial Insolvency Act. Consequently we hold that the Official Receiver is only entitled to mesne profits in respect of the shed at Rs. 12 per mensem for three years immediately preceding the 17th August, 1943, and to mesne profits at the same rate from that date until the 19th November, 1943, when the appellant delivered possession of the shed to

him. With regard to interest, the Official Receiver will have interest at six per cent, on Rs. 10,000 from the 17th August, 1937 to 19th August, 1942, when he deposited Rs. 10,000 in Court. On the Rs. 2,500, the Official Receiver will have interest at the same rate from the 17th August, 1937, until payment. The District Judge's order will be varied accordingly.

7. The appellant has succeeded in part. * He will get half his costs in each appeal.

8. The Official Receiver has filed memoranda of cross-objections claiming that he is entitled to mesne profits and interest from the dates of the alienations. As these claims are unsustainable, the memoranda of cross-objections are dismissed with costs.