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Court : Chennai

Decided On : Mar-07-1932

Reported in : AIR1933Mad271

Appellant : (Gunturu) Pullayya and anr.

Respondent : Official Receiver of Kistna and ors.

Judgement :

Ramesam, J.

1. The facts out which this C.M. Appeal arises may be stated as follows: The properties which are the subject of dispute originally belonged to one Mantravadi Suryanarayana Sastri. He had no children and he adopted his brother's son Kutumba Rao. This Kutumba Rao, soon after he attained majority, seems to have entered on a career of extravagance A deed of partition was then brought about between the adoptive father and the son. This is Ex. C, dated 23rd July 1914. We then have got a sale deed, Ex. 1(a), dated 26th July 1914, of the whole of the son's share of the properties in favour of one Nallanchakrvartulu Venkatacharyulu. It appears from the evidence that this Venkatacharyulu was a student of Suryanarayana Sastri for two or three years and studied Maha Bhashyam (Patanjali's great work in Sanskrit grammar) under him: vide R.W. 1. The partition deed and the sale deed were registered on the same day, namely, 28th July. The inference is irresistible that they are parts of the same arrangement that the sale

was agreed upon even before the partition was made effective by the execution of a registered deed. This sale deed was for Rs. 20,000. The details given for the consideration are: (1) the amount due in respect of the previous loans, Rupees 11,463-8-0; (2) the amount received in cash on the date of the sale deed, Rupees. 4,536-80; and (3) the amount agreed to be paid before the sub-Registrar, Rupees, 4,000.

2. Two decrees were obtained against Kutumba Rao: (1) by Sukavasi Veerayya in O.S. 92 of 1915, and (2) another in O.S. 72 of 1915. One of these suits was instituted prior to the sale deed, Exhibit 1(a). The other was filed a few days afterwards. In execution of these decrees the decree-holders attached the properties sold by the son Kutumba Rao as if they still belonged to him. The purchaser under Ex. 1-a, i.e. Venkatacharyulu, filed a claim petition which came on for orders before the District Munsif who passed the decree and his order is now filed as Ex. L. In that order he found that the two prior debts now filed as Exs. 6 and 4 and marked before the District Munsif's inquiry as Exs. B and C were not bona fide transactions. He also found as to the sale deed Ex. 1-a (then marked as Ex. A) that the vendee went to the Registrar's office to see its execution. The vendee's statement that it was registered at Gannavaram was erroneous, and he did not take the sale deed from the Registrar's office and neither he nor his witnesses knew who took it back from the Registrar's office. The claimant did not produce the receipts for the sircar cists which he claimed to have paid. He never saw the lands before purchasing them. The judgment-debtor was a young man of admittedly bad character. Suryanarayana Sastri was present at the execution of the sale deed and the District Munsif inferred that it must have been, returned to him. He found that the sale deed was a bogus transaction and dismissed the claim petition.

3. It is doubtful how far the reasons given in this order can be regarded as evidence in the present matter. I am not to be understood as referring to the contents of Ex. L as evidence. I am only narrating what happened in that inquiry. Venkatacharyulu had given evidence, and though by the time the present proceedings were started he was still living he did not care to give evidence in the present inquiry. He was respondent 1 in the Court below. In the appeal originally

filed in the High Court he was respondent 2, but during its pendency he died. He was not available to give evidence when the case was sent back for fresh evidence. The fact remains that he was not examined in support of the sale deed. On 11th April 1917 Venkatacharyulu executed an agreement in favour of Suryanarayana Sastry agreeing to resell the whole property to him for Rs. 18,000(Ex. 7). On the same date a receipt was executed reciting the payment of Rs. 18,000 as the consideration (Ex. 8), but curiously, and it seems to me an extraordinary circumstance, no sale deed was actually executed in favour of Suryanarayana Sastry. After the Transfer of Property Act has been in force for 35 years, it is very rare to find sale-deeds without registration, especially when the amount involved was very large; and it is so unusual that I regard the circumstance as extraordinary. It suggests that the original sale deed itself was a benami transaction and that the parties themselves were of opinion that the title never really changed and no fresh sale deed was really therefore necessary. However mere suspicions will not amount to proof and one has to look into it more fully before coming to any decisive conclusion. At present, I only mention the suspicion that arises. Suryanarayana Sastry executed an agreement on 9th December 1917, in favour of his brother's wife Venkatalakshmamma, that is, the natural mother of his adoptive son. It recites that he purchased the property from Venkatacharyulu on 11th April 1917, and obtained possession, and the receipt of Rs. 18,000 and agrees to convey the land to her and directing that she herself should get a deed of sale executed in her favour by the said Venkatacharyulu and purports to deliver possession of the lands. Thus we see the property has come back to the mother of Kutumba Rao in a roundabout way through three transactions. Here again I pause to remark that a suspicion naturally arises that the transactions were really benami and constitute an attempt to screen the property from the creditors of Kutumba Rao and were intended really to benefit the family of Kutumba Rao and his mother, the title being ostensibly made to rest on the mother. Kutumba Rao was adjudicated insolvent by the District Court on 26th March 1917 on a petition dated 22nd September 1915. The date is very significant. On 7th October 1917 Suryanarayana Sastry executed a will, Ex. D. He says his brother's wife Venkatalakshmamma should protect him in future and there is nobody else to look after him. Soon after the dismissal of the claim petition of

Venkatacharyulu by Ex. L, suits were filed in the name of Venkatacharyulu against the decree-holders. These are O.S. Nos. 129 and 130 of 1916 on the file of the District Munsif's Court of Bapatla. They were afterwards numbered as 725 and 726 on th file of the District Munsif's Court of Tenali to which Court they were transferred. I will later on show that these suits were conducted and the expenses connected with them were really incurred by Suryanarayana Sastry himself and not by Venkatacharyulu as one would expect if the sale deed was a real transaction. After Suryanarayana Sastry's death towards the end of 1917, Venkatalakshmamma sent her brother to demand a sale deed from Venkatacharyulu. This attempt resulted in a sale deed from Venkatacharyulu, in favour of Manda Venkayya, father-in-law of Venkatalakshmamma's brother, Ex. 3, dated 18th March 1920. Venkatalakshmamma naturally attacked the bona fides of this sale deed. One recital in the sale-deed is very significant:

If in respect of the schedule-mentioned property covered by the sale, any others should institute any suit you should yourself bear the loss and profits and also bear the costs of the suit,

4. We have here got a clause which is opposite to the usual warranty of title in a sale deed. Here the vendor is not to be responsible for any dispute regarding the sale, but the vendee has to look to it. This adds to the suspicion that the vendor himself had not much interest in the property. However, as I have said, the bona fides of Ex. 3 was in question and the matter was ultimately settled by the execution of Ex. 22 by Manda Chinna Venkayya, vendee, under Ex.3, in favour of Venkatalakshmamma. The document is described as a sale deed or a deed of conveyance. But it was only for Rupees 4,000. It recites that Venkatalakshmamma questioned the bona fides of the sale deed, Ex. 3, dated 18th March 1920, and therefore he relinquished all the rights possessed by him in favour of Venkatalakshmamma for a consideration of Rs. 4,000. Strictly it does not look like a deed of conveyance and it looks more like a document of release. It simply says that Venkayya will not dispute her title to the property, that Ex.3 was a document obtained improperly by Venkayya from Venkatacharyulu and is inoperative to convey any title to Venkatalakshmamma. It shows the consciousness of the parties that Venkayya had no title to convey. If Venkatalakshmamma is to get a

valid title from Venkatacharyulu, the proper thing is to obtain a sale deed from him. Such a sale deed has never been obtained to this day in spite of the agreement. Ex. 7, and of the receipt Ex. 8 and the agreement, Ex. II-A. That throws some light on the title possessed by Venkatacharyulu in the belief of the parties. The present proceedings were started by a petition filed by the Official Receiver of Kistna in September 1921. He prayed for annulment of the sale deed, Ex. 1(a), dated 26th July 1914, and the further sale deed, Ex. 3, dated 18th March 1920. The District Judge, Mr. Lakshmana Rao, dismissed the petition. A Civil Miscellaneous Appeal was filed against that order.

5. This appeal came on before us on a former occasion, namely, on 2nd December 1927, and we passed an order on that date in which most of the facts now stated were mentioned. Many of the suspicious circumstances now referred to by me were also mentioned. We formed the tentative opinion on that occasion that the sale deed, Ex. 1(a) and further transactions following it were not bona fide transactions. But it was complained before us by the learned advocate for the respondent Venkatalakshmamma that he was not able to adduce full evidence in the matter because the Official Receiver was not seriously pressing his petition. The District Judge himself has noted that the Official Receiver stated before him that he pressed the claim only formally. It may be mentioned here that the services of the Official Receiver were since dispensed with by Government on the recommendation of the High Court, and having regard to this fact we thought it was possible that the respondent did not place before the Court all the available evidence and we thought it proper to give another opportunity to Venkatalakshmamma to adduce all her evidence. We regarded the opinion we then formed as merely tentative and without arriving at any final conclusion we sent the case back for further evidence. In the order passed on the former occasion several deficiencies in the evidence were noticed.

6. It was suggested by the learned advocate that Venkatacharyulu was the guardian of Lakshminarasimhacharyulu who was supposed to be the creditor under the promissory note, Ex. 6, dated 1913. The suggestion is that the guardian in taking the sale deed, Ex. 1(a) adjusted the amount due under Ex. 6 in the accounts between himself and the widow (mother of Lakshminarasimhacharyulu).

The further evidence now taken proves the guardianship. The promissory note itself was not then filed. The agreement of sale by Venkatacharyulu in favour of Suryanarayana Sastry to sell the property Ex. 7, was not then filed. The final decision in the regular suit in the Tenali Munsif's Court on the dismissal of the claim petition was not then filed. It is now filed as Ex. 26. Having regard to these gaps in the evidence we thought the advocate's complaint was justified. Fresh evidence has now been adduced on both sides and the matter comes on before us for final disposal.

7. At the outset I must recognize that the burden of proof is upon the Official Receiver or the creditors who want to question the sale deed. Prima facie when a registered sale deed is produced, the presumption is in favour of the transfer of title under it. Even in a proceeding under Section 53, Provincial Insolvency Act, it was recently held by the Privy Council in The Official Assignee, of the Estate of Cheah Soo Tuan v. Khoo Saw Cheow AIR 1930 P.C. 265 that burden of proof is on the party who questions the bona fides of the sale deed. Though at the time of the former order it was thought that the respondent had to adduce further evidence, as a matter of fact both parties have adduced further evidence and all evidence in the case is before us. We can therefore deal with it on the footing that the burden is on the creditors and the Official Receiver. The first thing to be noted is that Kutumba Rao was declared insolvent on his own petition filed on 22nd September 1915. That suggests that even in 1914 he must have been in very involved circumstances. The consideration for the sale Ex. 1(a) consists of two promissory notes besides cash payments. It is always easy to get a promissory note in support of other transactions. It is not usual to lend large sums on promissory notes, that is without any security except in commercial transactions. (After considering some of the exhibits, the judgment proceeded). On this second occasion when the case was heard, a question of law was raised by the learned advocate for the respondent that in proceeding under Section 53, Insolvency Act, only the transfer by the insolvent can be annulled and the further transactions by the transferees cannot be set aside. He referred to a decision of the Lahore High Court in Hayat Muhammad v. Bhawani Das AIR 1926 Lah 146 and Sudhu v. F.N.C. Daulat Ram AIR 1925 Lah 295.

8. That is also a decision of this Court in Ponnamai Ammal v. District Official Receiver, Tinnevelly (4) to which my brother Madhavan Nair, J., was a party. But when the facts of the case are examined it scarcely supports the proposition contended for. The learned Judges have found in that case that Ex. 10 ought to be upheld. That being so there is no ground to attack Ex. 11, the further transfer by the vendee. On these facts really no such question arises. What the learned Judges seem to have meant in that case was that later transactions by the transferee cannot be questioned on a ground peculiar to themselves and independent of the attack in the main transaction but surely there can be no objection to holding that if the sale deed by the insolvent was not bona fide the further transactions by the transferees also fall to the ground along with it. The matter was further considered by another Bench of this Court in Jagannadha Ayyangar v. Narayana Ayyangar AIR 1929 Mad 58. One of the learned Judges (Oldfield, J.) points out that the practice in England is different and refers to In re Vansittart, Ex parte Brown AIR 1920 Mad 917 and In re Brall Ex parte, Norton (1893) 2 QB 377. He however thinks that the language in the Indian Act is different and proceeds to disallow the contention by pointing out that the real point in that case was that there was no real transfer by Ex. 3 by the first transferee but only a concealment of the insolvent's property and if that is established there is really no real transfer to any intermediate transferee. That is exactly the point in the case before us and the learned Judge's distinction equally applies now. The learned Judge also says that even if under Section 36 of the old Act (corresponding to Section 53 of the present Act) only the first transfer can be annulled, he was not expressing any opinion in respect of the validity of the later transfers as the foundation for further legal proceedings. Seshagiri Iyer, J., thinks even under the Indian Act all the transactions can be annulled and he relies on the English cases.

9. I am inclined to agree with the opinion of Seshagiri Iyer, J., and even if it can be really said that later transactions by the transferees from the insolvent cannot be considered in a petition under Section 53 they cannot be considered only on grounds peculiar and not as consequential on the main transaction. If we remember that distinction, I do not think there is any real difficulty. Moreover the question does not really arise in the present case. There is no sale deed by Venkatacharyulu in favour of Venkatalakshmamma and the Official Receiver does

not seek to set aside any such sale deed. No doubt, the Official Receiver wanted to have Ex. 3 cancelled. But that relief is now unnecessary. The parties themselves have cancelled Ex. 3 by the relinquishment deed, Ex. 22. China Venkayya himself admits that he has no more right to the property. No formal annulment of Ex. 3 is now necessary and the only sale deed that has strictly to be annulled is Ex. 1(a) of July l914. The point has been raised at a very late stage in the case and it is purely technical. * Even if Section 53 does not apply we can declare such transactions void under Section 4: see Biseshwar Chaudhuri v. Kanhai Singh : AIR1932 Pat129 . Both on the merits and on the other grounds indicated. I decide this point against the respondent.

10. The result is the appeal must be allowed and the sale deed, Ex. 1(a) is annulled as a fraud on the creditors. The Official Receiver is declared entitled to proceed against the properties in the sale deed for the benefit of the creditors. I understand that most of the creditors have either been paid or did not take interest in the matter. Only one creditor, one who filed C.M.A. No. 314 originally, has to be paid up. If his debt is paid up, Venkatalakshmamma can still enjoy the property which once belonged to her husband's family and her son. We hope the parties will settle the matters on such a footing. If they do not, the property must be available for distribution among the creditors. Venkatalakshmamma must pay the costs of this appeal and in the Court below to the original appellant.

Madhavan Nair, J.

11. I agree with my learned brother; but on the point of law argued by Mr. Raghava Rao relying on Ponnamai Ammal v. District Official Receiver, Tinnevelly (4), I will add a few words. Strictly speaking, the point raised by the learned Counsel does not arise in this case as there is no sale deed by Venkataraghavulu, the insolvent in favour of respondent 4. It is true that the Official Receiver desires to have Ex. 3 cancelled but that has been cancelled by Ex. 22. However, as the point has been argued, I will express my opinion. In Ponnamai Ammal v. District Official Receiver, Tinnevelly (4), Wallace, J., and I pointed out, basing our judgment on the words of Section 53, Provincial Insolvency Act, that it was not open to the Official Receiver to attack a transfer from the transferee of the insolvent. In that case it must be

noticed that the transfer by the insolvent which was questioned was upheld; and then the Official Receiver sought to question the transfer made by the transferee on altogether independent grounds and we held that this could not be done under Section 53, Insolvency Act. In the present case the transactions in question including the alienations made by the transferee from the insolvent are all attacked as links in a chain of fraudulent and connected transactions intended to screen the property from the claims of the creditors, so that while the transaction in favour of respondent 4 is attacked what is really attacked is the original alienation made by the insolvent himself. Viewed in this light the alienation made by the insolvent cannot be considered apart from the alienation in favour of respondent 4. The transactions in question are all interlinked. The decision in Ponnamai Ammal v. District Official Receiver Tinnevelly (4), is thus distinguishable on the facts from the present case. I may here add that in Ponnamai Ammal v. District Official Receiver Tinnevelly (4), it was not argued before us whether the validity of the transaction could be questioned under any other provision of the Provincial Insolvency Act. In a case like the present, if the facts are proved, I do not think it can be said that insolvency Court has no jurisdiction to declare the transactions to be invalid and not binding on the creditors. Though Section 53 of the Act may not strictly apply, in a proper case I think the Court has jurisdiction under Section 4, Insolvency Act, to declare the transactions invalid. Section 4, Clause 1, Act 5 of 1920 is as follows:

Subject to the provisions of this Act, the Court shall have full power to decide all questions whether of title, or priority, or of any nature whatsoever and whether involving matters of law or of fact, which may arise in any case of insolvency coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

12. It will be seen that this section is very widely worded and gives insolvency Courts powers not only to decide all questions of title or priority but all other questions which the Courts may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property. The jurisdiction conferred under Section 4 on the Insolvency Court is not limited in

any way by Sections 53 or 54, Insolvency Act. In my opinion, in a case like the present, Section 4 may be relied on by the Official Receiver in support of the contention that the Court has jurisdiction to declare that the transactions in question are invalid. I would therefore hold that the decision in Ponnamai Ammal v. District Official Receiver, Tinnevelly (4) is inapplicable to the present case;

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