

Ramanathan Chettiar Vs. Subramanian Chettiar and anr.

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Court : Chennai

Decided On : Aug-27-1924

Reported in : AIR1925Mad248

Appellant : Ramanathan Chettiar

Respondent : Subramanian Chettiar and anr.

Judgement :

Madhavan Nair, J.

1. The facts of this case are not disputed. In execution of a decree against the respondent, his properties were brought to sale on the 27th of June, 1922, and his auction-purchaser deposited 25 per cent, of the sale-proceeds in the District Munsiff's Court at Tiruppur. On the 1st of July, 1922, an Insolvency Petition was filed against the 2nd respondent and the Official Receiver was appointed interim Receiver, on the 4th of July, 1922. The balance of the purchase-money was deposited on the 11th of July, 1922, and the 2nd respondent was adjudicated an insolvent, on the 15th of September, 1922. In the meanwhile, the sale-proceeds of the 2nd respondent's properties were forwarded to the Official Receiver by the District Munsiff. On the 26th of July, 1922, an application was filed before the District Judge of Coimbatore by the creditor, who attached the properties and brought them to sale for the re-transfer to the District Munsiff's Court of Tiruppur of the sale-proceeds, to be dealt with by him, according to law. The petitioning

creditor who applied under the Insolvency law for the adjudication of the debtor as an insolvent and for the appointment of the interim Receiver resisted this application and the District Judge rejected it. This appeal is by the creditor against the order of the District Judge, refusing to re-transfer to the District Munsiff's Court of Tiruppur, the sale-proceeds of the 2nd respondent's properties, now in the possession of the interim Receiver.

2. The principle of law to be applied to the decision of this appeal is embodied in Section 51, Clause (1) of the Provincial Insolvency Act, which runs as follows:

Where execution of a decree issued against the property of a debtor, no person shall be entitled to the benefit of the execution against Receiver, except in respect of assets realised in the course of the execution by sale or otherwise before the date of the admission of the petition.

3. It has been argued by Mr. Krishna swamy Aiyar that, according to this Section, irrespective of the time of realisation, assets realised in the course of execution by a sale, which has been held before the date of the admission of the Insolvency petition are preserved, for the benefit of the execution creditor; or in other words, if the sale by means of which the assets are realised is held before the date of the admission of the petition, then the assets, even if they be realised, after the date of the admission of the petition, enure to the advantage of the execution creditor. Shortly stated, this argument makes the 'date of the admission of the petition' qualify the 'sale' and not 'assets realised' in the section. The records in the case do not show the date of the admission of the petition; but, for the purpose of this appeal, the date may be taken to be sometime between the 1st and 4th of July; in any event, it cannot have been later than the 4th of July, when the interim Receiver was appointed. Since the execution sale in this case was held on the 27th of June, 1922, (i.e.) anterior to the 4th of July, it follows from the argument just stated that the appellant-creditor is entitled to all the assets, as against the interim Receiver. We cannot accept this argument. It seems to us, that:

the policy and the object of the statute is to secure the even distribution of a debtor's estate among his creditors, and to prevent the more active creditors from getting an undue advantage over these who may be less active. *Bower v. Hett*

(1895) 2 Q.B. 51.

4. This object will obviously be frustrated if we accept the construction put upon the section by the learned vakil for the appellant. We think that the words 'date of admission of the petition,' occurring in this section, qualify 'assets realised;' so that., only assets, realised before the date of the admission of the petition, will enure to the benefit of the execution creditor. The question then arising for consideration is, were assets realised in the course of execution, before the date of the admission of the petition, in this case? The words 'assets realised in the course of execution' have been interpreted in many decisions in cases, which arose under Section 295 of old Civil Procedure Code, corresponding to Section 73 of the present Code. We think these may be usefully referred to, for elucidating the meaning of the words 'assets realised' occurring in this section. In *Hafez Mahomed Ali Khan v. Damodar Pramanick* (1891) 18 Cal. 242, it was held that, when property is sold in execution of a decree, the sale-proceeds may be said to be assets realised, only when the balance of the purchase-money is paid and not when 25 per cent, is deposited in Court. In *Ramanathen Ghattiar v. Subramania Sastri* (1903) 26 Mad. 179 occur the following observations by Sir Arnold White, C. J.

It seems to me that the word 'assets' in Section 295, Civil Procedure Code, means the proceeds of the sale of the property, which is sold in execution of the decree. As far as the present case is concerned, I am of opinion that the assets were realised, when the whole of the proceeds were paid into Court.

5. Though there is no doubt a change in the corresponding provision of Section 73 of the present Code, in that it substitutes the word 'receipt' for the word 'realised' in Section 295, still so far as the question before us is concerned, the decisions under Section 73 are also helpful, in arriving at a conclusion as to the meaning of the term 'assets realised.' In this case, in *Anmuthu Chetty v. Vyapuripandaram* (1912) 31 M.L.J. 505 where the purchaser made the deposit on the 17th of September, 1909, and the balance of the purchase-money was paid into Court, on the 29th of September, 1909, it was stated by Abdur Kahim, J.:

It must be taken, having regard to the decision, in *Ramanathen Chettiar v. Subramania Sastrial* (1903) 26 Mad. 179 that the assets were realised only on the 29th of September, 1909, within the meaning of Section 295 of the Old Code. There is no doubt a change in the corresponding provision of Section 73 of the present Code. But so far as the question before me is concerned, the change in the language is immaterial. The purchase-money becomes the asset of the judgment debtor only when the balance is received and not when the deposit is made.

6. To the same effect is also the decision, in the *Maharajah of Burdwan v. Apurba Krishna Roy* 15 C.W.N. 872. Having regard to these decisions, we must hold that, in this case, the appellant is not entitled to claim either the balance of the purchase-money, or the initial deposit of 25 per cent, as these cannot be considered to be 'assets realised,' in the course of the execution by sale, before the date of the admission of the Insolvency Petition, within the meaning of Section 51 of the Provincial Insolvency Act. It follows, therefore, that the appellant's petition, for re-transfer of the sale proceeds, to the District Munsif's Court of Tiruppur was rightly rejected by the District Judge.

7. We dismiss this Civil Miscellaneous Appeal with costs.

C.M.A. No. 23 of 1923.

8. Following the decision in C.M.A. No. 22 of 1923, this Civil Miscellaneous Appeal is also dismissed. No costs.

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