

Mt. Debi Vs. Official Assignee and ors.

Mt. Debi Vs. Official Assignee and ors.

SooperKanoon Citation : sooperkanoon.com/863288

Court : Kolkata

Decided On : May-19-1942

Reported in : AIR1943Cal511

Appellant : Mt. Debi

Respondent : Official Assignee and ors.

Judgement :

Derbyshire, C.J.

1. This is an appeal from a decision of Gentle, J., sitting in the insolvency jurisdiction of this Court given on 20th January 1942, whereby on the application of the Official Assignee of Calcutta he made a declaration (a) that the indenture of sale dated 24th August 1938, and made between Ramsarup Bhatwal and Mussamat Debi, his mother, was void and had no effect against the Official Assignee; and (b) that the properties comprised in the indenture belonged to the official Assignee. He also made an order that the respondents in this matter should deliver up to the Official Assignee the properties in question with their title deeds. There was a firm carrying on business in Calcutta in 1938 of the name of Badridas Chunilal. Its partners were Ramsarup Bhatwal and Bhairrolal Bhatwal. This firm was associated with another firm of Badridas Chunilal at Gorakhpur in the United Provinces. In the Gorakhpur firm there were three partners two of whom were Ramsarup and Bhairrolal. On 26th September 1938, Messrs. Ram Chunder Hanumanbux, the creditors of the Calcutta firm, presented a petition in insolvency

against the firm of Badridas Chunilal of Calcutta and on 17th January 1939, the partners of Badridas Chunilal were adjudicated insolvents. In August 1939 the two insolvents submitted, a scheme of composition by which the trustees were empowered to make a distribution of the property comprised in the scheme amongst the creditors. This scheme was approved by an order of this Court dated 14th. September 1939, and on that date the Court annulled the adjudication of insolvency. Nothing appears to have been done in connection with that scheme with the result that on 7th July 1941, an order was made under Section 31(1), Presidency Towns Insolvency Act, by this Court setting aside the approval of the scheme and readjudicating the debtors as insolvents. The Official Assignee applied for relief against the two insolvents which as I have mentioned above Gentle, J., granted. When the debtors were adjudicated insolvents originally the Court found that the following acts of insolvency had been committed by the debtors:

(a) that with intent to defeat and delay the creditors of the debtors Jagannath Panday the munib gomastha of the debtors departed from the usual place of the debtors in Calcutta and absented himself therefrom from the evening of 26th August 1938, until 5th September 1938;

(b) that with the same intention the same gomastha secluded himself from 27th August 1938 up to 5th September 1938 so as to deprive the creditors of the debtors of the means of communicating with him;

(c) that on 27th August 1938 at the debtors' place of business Monoharlal, the gomastha of the debtors gave notice to the gomastha of some of the creditors that the debtors had suspended payment of their debts;

(d) that with a view to giving preference the debtors had transferred a portion of their goods and certain shares and debentures to some persons alleged to be their creditors with a view to giving them a fraudulent preference over the other creditors; and

(e) that the debtors departed from their usual place of business on 19th September 1938 and were secluding themselves so as to deprive their creditors of

the means of communication.

2. That order, as I have said, was made on 17th January 1939 on a petition dated 26th September 1938. On 24th August 1938, that is to say three days before the debtor's gomastha gave notice of the debtors suspending payment of their debts, one of the debtors, Ramsarup, executed a conveyance of three houses in Gorakhpur in favour of his mother the present appellant, Mussamat Debi who, lived in Gorakhpur. The conveyance is interesting. The operative part reads:

My mother has the sum of Rs. 23,500 deposited in the firm of Badridas Chunilal of Golabazar Gorakhpur. And pressing demands for the same are being made on behalf of my mother Mussamat Debi and I the executant have no cash money just now so that I can relieve myself of the burden by paying up the amount in full. Therefore it is highly impossible for me to repay the amount now. Therefore in a sound state of body and mind in full possession of the five senses and intelligence of my own will and accord, without any force, compulsion or pressure from another having fully understood and realised the import have sold absolutely the houses and garden as per four boundaries below to my mother Mt. Debi for a consideration of the sum of Rs. 23,500 and I the executant hereof have continued to be in possession and occupation of the houses sold hereby as owner without any other cosharer or interference from another, that is to say, no person other than myself is a cosharer or partner therein. And the property sold hereby is free from and clear of all kinds of liabilities and charges. And have received payment of the full and entire amount of consideration for this deed. Not a bit remains outstanding from the purchaser to me the executant and I have withdrawn my possession and occupation from the houses and garden sold hereby and made over the possession and occupation of the property sold hereby to the purchaser. And I cease to have any connection or concern with the houses and garden from this date, that is to say, I shall have no further connexion or concern with the property sold. It is desired that the said purchaser be in possession and occupation of the houses and garden and take her ownership as perpetual. Therefore, this deed of absolute sale by these few words have been executed so that it may be of use in time of need.

3. That document was registered at the Sub-Registry of Basti, District Gorakhpur. The Official Assignee says that that transaction is void as being contrary to Sections 55 and 56, Presidency Towns Insolvency Act. The Official Assignee put in an affidavit by one of his gomasthas who stated that he was acquainted with the proceedings, and he set out the facts as derived from the books of the insolvent firm and from the file of the insolvency proceedings. The appellant Mt. Debi has put in an affidavit, Para. 8 of which says:

I say that the transfer of the said properties in my favour was done in the following circumstances : A sum of about Rs. 25,000 belonging to me was kept with my son the insolvent in his business for investment. My son and the said firm of Badridaa Chunilal were really trustees in respect of the said sum of Rs. 25,000. The said sum was transferred to the account of Badridas Ramsarup of Basti, a firm which has not been adjudicated insolvent in this suit. The said firm held the money on trust for similar purpose. The insolvent was also a partner in the said firm of Badridas Ramsarup of Basti. I pressed for account of the said money. On 15th August 1938, I pressed for repayment of the said money and threatened the partners with suit. The property which is the subject-matter of this application was conveyed to me in satisfaction pro tanto of my dues and I accepted the said transfer as such.

4. In answer to that the same gomastha of the Official Assignee, Kishori Nandan Sinha, put in an affidavit in para. 8 of which he said this:

With reference to Para. 12 of the said affidavit, I say that I had been to Basti during the last Puja vacation and found that the insolvent Ramsarup Bhatwal was occupying and carrying on business at the Basti property under the name and style of Matadin Murarilal. The other two properties which were also alleged to have been transferred in favour of Sreemutty Debi are in the possession of the insolvent Ramsarup Bhatwal.

5. Now what are the facts with regard to that transfer? It was made three days before the firm, of which Ramsarup was a member, told its creditors that it could not pay its debts. It was a conveyance in favour of Ramsarup's mother stated to be in consideration of Rs. 23,500 owing by the firm of Badridas Chunilal. The mother

says that the money was deposited with the firm to hold it on trust. She does not say when the money was deposited with the firm; no evidence has been given as to that. She does not say who deposited the money with the firm; no evidence has been given as to that. She does not prove the receipt for the money. She does not say what the terms of the alleged trust were. She simply says that the money was deposited with the firm on trust for her.

6. The learned Judge found that there was no entry in the books of the firm of Badridas Chunilal in Calcutta to support the mother's statement. We have been told that if some other books, namely, those of Badridas Chunilal at Basti, Gorakhpur, had been put in evidence they would have shown that this debt was owing by that firm to the mother. That evidence was not forthcoming at the hearing before Gentle J. The mother must have been in close touch with Ramsarup and one would think that she could through Ramsarup have procured the necessary books to show an entry of this debt to her and produced it before the Court at the trial. That was not done. It is not an uncommon thing for relatives of insolvents to be put down as creditors of the insolvents so as to save something for the debtors out of the wreckage of the concern. 'When one finds the mother of one of the insolvents making a claim as here based on a debt of which there is no evidence except her own statement and that of the insolvent, the Court is bound to look upon such a claim with considerable suspicion. The matter does not end there. The indenture of conveyance was produced in Court, but it was produced from the custody of the Official Assignee who had received it from the debtors. If that indenture of conveyance had been intended to be and was a genuine document one would have expected it to be in the possession of the mother. But it was in the possession of the debtors. Again when the debtors, the firm of Badridas Chunilal including Ramsarup, filed their statement of affairs and set out property which belonged to the firm they included in the schedule the particular property comprised in this indenture and scheduled it as their own property. As appears from the affidavit of the gomastha of the Official Assignee, Ramsarup after his adjudication was occupying the property and carrying on business under the name and style of Matadin Murarilal. In the books of the firm of Badridas Chunilal at Basti there is this entry:

Rs. 23,500 - Dr. to Chiru mother of Ramsarup Miti Bhadava Badi 14th S.Y. 1995.

Ramsarup conveyed house in your favour for your money which was lying credited. By debiting the account in your name it is being credited to Ramsarup.

Rs. 23,500 - Credited to Chiru Ramsarup.

Rs. 23,500 - Credited to Chiru mother of Ramsarup. Ramsarup had conveyed the house to you and which he took back from you and gave over to the Mahajans of Calcutta.

7. It appears quite clear that after this conveyance, Ramsarup was still occupying the property and treated it as his own property when he made a statement of his affairs to the Official Assignee. It is very difficult for me to draw the inference that that indenture of conveyance was a genuine indenture intended to convey the property to Ramsarup's mother the appellant Mt. Debi. If it were not a genuine document it is difficult to believe that the debt of Rs. 23,500 was a genuine debt either. The inference that I draw from this transaction is that the conveyance was a sham; it was intended for a time to keep the property away from the creditors of Ramsarup. For some reason Ramsarup changed his mind afterwards and handed the property over to the Official Assignee and then his mother came in and claimed it. In my opinion the transaction was not one made in good faith and for [valuable consideration so as to be good within the meaning of Section 55, Presidency Towns Insolvency Act.

8. The Official Assignee has also claimed that this conveyance is void and is a fraudulent preference under Section 56 of the Act. If it were a sham transaction such as I have indicated this further question does not fall to be considered. But I will assume for the purpose of considering it that the transaction was not a sham intended to defeat creditors, but was a transaction intended to convey the property out and out to Mt. Debi in consideration of a genuine debt of Rs. 23,500. The question to be answered is - was it a fraudulent preference, that is to say, a conveyance made with a view to giving Mt. Debi preference over the other creditors? Mt. Debi in her affidavit says that she pressed for repayment of Rs. 23,500 and threatened to bring proceedings for that amount, and thereupon the

conveyance was made in her favour. If the dominant motive of Ramsarup was to get rid of genuine pressure from his mother who threatened him with a law suit then this might not be a fraudulent preference. One has to look at the surrounding circumstances and the probabilities arising out of them. Admittedly Ramsarup's firm Badridas Chunilal could not pay its debts at the time the conveyance was made. Ramsarup in the indenture itself says that he had no money. If Ramsarup conveyed the property to his mother she might be kind enough to give him some of it back, if not the whole of it, when the insolvency had gone by. But if he did not convey it to her it would be there for the creditors. If he did not convey it to her was there a likelihood that she would bring a law suit against him? That is possible, but not I think likely. I think it is more probable that he would make the payment with a view either to preferring his mother if she were a genuine creditor rather than yielding to her threats of a law suit. He had much to gain from the conveyance and very little to fear from the threats of a law suit. In my opinion, if the Rs. 23,500 was a genuine debt the dominant motive in Ramsarup's mind was to convey the money to his mother in preference to other creditors. I am of the opinion that if the debt was a genuine one (which I do not believe) then the conveyance was a fraudulent preference within the meaning of Section 56, Presidency Towns Insolvency Act.

9. However another point has been taken on behalf of Mt. Debi. It is contended that as the original adjudication was annulled when the scheme of composition was sanctioned, the only adjudication which is relevant for purposes of this matter is the readjudication of the insolvents on 2nd July 1941, therefore that it cannot be said that the insolvents were adjudged insolvents on a petition presented within three months after the date of the fraudulent preference (Section 56) or within two years of the date of the transfer (Section 55). In my opinion that argument cannot stand. The facts of this case are within the words of Sections 55 and 56, Presidency Towns Insolvency Act. There was a petition presented on 26th September 1938. The insolvents were adjudged insolvents on 17th January 1939, on acts of insolvency ranging from 26th August to 19th September 1938. Those are facts which cannot be destroyed by any order which was made subsequently which had the affect of annulling the adjudication. They are facts which satisfy the requirements of the statute. In my view, when the scheme of composition was annulled and the debtors were read judged insolvents on 2nd July 1941, that

second insolvency was linked up with the first insolvency, and the insolvency proceedings became one so that the acts of insolvency and the adjudication originally made are available for purposes of any subsequent proceedings which may be brought in insolvency for the recovery of property belonging to the insolvent. That is in keeping with the decision of Page J. in *In re Krishna Kishore Adhicary* : AIR1928 Cal21 . If it were not so, then the debtor who might be adjudged an insolvent upon certain acts of insolvency might offer a plausible scheme of composition to his creditors, have the scheme sanctioned by the Court, delay the carrying out of the scheme of composition and then after a lapse of more than two years defeat the provisions of the insolvency law and cheat his creditors who claimed to set aside voluntary transfers and fraudulent preferences by contending that the provisions of Sections 55 and 56, Presidency Towns Insolvency Act could not then be complied with. For those reasons, I am of the opinion that the decision appealed from is correct and that this appeal must be dismissed with costs. Certified for two counsel.

Sen, J.

10. I agree with what has fallen from my Lord the Chief Justice and have nothing to add.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com