

(1980) 03 MAD CK 0053

In the Madras High Court

Case No : Appl. No. 378 of 1979 and I.P No. of 1977

A. Narayan Nair an insolvent The Office Assignee, Madras

APPELLANT

Vs

Kochama Amma and Others

RESPONDENT

Date of Decision : 28-03-1980

Acts Referred:

Presidency Towns Insolvency Act, 1909 — Section 53, 55, 56, 57, 7

Provincial Insolvency Act, 1920 — Section 4, 4(1), 53, 54, 55

Transfer of Property Act, 1882 — Section 53

Citation : (1980) 03 MAD CK 0053

Hon'ble Judges : Padmanabhan, J

Bench : Single Bench

Advocate : K.M. Subrahmanyam, for the Respondent

Judgement

Padmanabhan, J.—The question that falls for consideration in this in this insolvency petition is whether an Insolvency Court can try a question of title on the basis of a transfer which took place more than two years prior to the adjudication having retard to the provisions of S. 55 of the Presidency Towns Insolvency Act. The facts may be set out as follows:

One Narayan Nair, the 6th respondent herein, was adjudged by this Court as Insolvent on 7th February, 1977. The insolvent had one-sixth share in certain landed properties and houses in Nallepullal Village, Chlittur Taluk, Kerala State. In the course of investigation into the affairs of the insolvent, the Official Assignee discovered that the insolvent had released his rights, title and interest in the said properties in favor of his brothers and sisters, respondents 1 to 5 herein under the release deed, dt. 22nd July, 1974. The consideration for the release is said to be Rs. 10,000 out of which Rs. 5,300 was paid to one Viswanatha Menon and Rs. 4,700 was received by the insolvent. According to the Official Assignee the consideration of Rs. 10,000 recited in the release deed was very low. From the report received by the Official Assignee from Tahsildar, Chittur the entire property was worth Rs. 1,37,840 and the one-sixth share of the insolvent would come to

Rs. 22,973,33. In the circumstances, the case of the Official Assignee is that the insolvent executed the release deed for a grossly inadequate consideration with the intention of defeating and delaying his creditors. In these circumstances, the Official Assignee has filed this application for a declaration that the release deed, dt. 22nd July, 1974, executed by the 6th respondent in favor of respondents 1 to 5 is illegal and void. It may be made clear at the very outset that it is not the stand of the Official Assignee that the release deed, dt. 22nd July, 1974 executed by the insolvent is sham and nominal. The release deed is said to be voidable and liable to be set aside on the ground that it has been executed for an inadequate consideration to defeat and delay the creditors within the meaning of S. 53 of the Transfer of Property Act. The registration copy of the release deed is marked as Ex. P1 and the letter, dt. 11th May, 1978 addressed by the Tahsildar, Chittur to the Official Assignee is marked as Ex. P2. These documents have been marked through P.W. 1.

2. Mr. K.N. Subrahmanyam, the learned counsel for respondents 1 to 5 raised a preliminary objection that the application is not maintainable and that the Insolvency Court has no jurisdiction under S. 7 of the Presidency Towns Insolvency Act, (hereinafter referred to as the Act) to try the question of title raised on the basis of a transfer which took place more than two years prior to the adjudication. The learned counsel argued that under S. 55 of the Act, any transfer of property affected by the Insolvent within two years of the date of adjudication shall be void. Admittedly, in this case, the release deed has been executed by the insolvent more than two years prior to the date of adjudication and that consequently the release deed is not hit by S. 55 of the Act. Therefore this Court is not entitled to try the question of title under S. 7 of the Act. The learned counsel contended that S. 7 of the Act was subject to the other provisions of the Act and therefore, was controlled by the provisions of S. 55 of the Act. On the other hand, the learned Official Assignee argued that the application filed by him for the avoidance of the release deed was not under S. 55 of the Act, but under S. 53 of the Transfer of Property Act, S. 7 of the Act conferred on the Insolvency Court, wide powers to decide all questions of priorities and all other questions whatsoever whether of law or fact which may arise in any case of insolvency coming within the cognizance of the Court. The Official Assignee therefore, would submit that the Insolvency Court has jurisdiction to decide the question whether a transfer made by the insolvent is liable to be set aside on the ground that it has been executed with, the intent to defeat or delay the creditors.

3. The Insolvency Court is a creature of statute having jurisdiction over matters within such limits as have been imposed by the statute to which it owes its existence. S. 53 of the Act states that no person shall be entitled to the benefit of the execution against the Official Assignee, except in respect of assets realized in the course of the execution by sale or otherwise before the date of the admission of the insolvency petition. S. 56 of the Act has conferred upon the Court of Insolvency the power in certain circumstances to displace transfers

which have taken place prior to the presentation of the petition for insolvency. S. 57 gives protection to the transfers made by the insolvent before the date of the order of adjudication, the transferee not having had notice of the presentation of the insolvency petition.

4. Apart from the sections referred to above the other section which confers the power on the Insolvency Court to declare a transfer effected by the insolvent as void is S. 55 of the Act which runs thus:

Any transfer of property, not being a transfer made before and in consideration of marriage, or made in favor of a purchaser or encumbrance in good faith and for valuable consideration shall, if the transferor is adjudged insolvent, within two years after the date of the transfer, be void against the Official Assignee.

It is under this section all transfers of property affected by an insolvent within two years of the date of adjudication shall be declared void as against the Official Assignee. The exception noted in the section is a transfer made before and in consideration of marriage, or made in favor of a purchaser or encumbrance in good faith and for valuable consideration. This section is based on the principle of bankruptcy law that any cession bunkroom made by an insolvent on the eve of bankruptcy for the benefit of some creditors to the exclusion of others, or any scheme or arrangement made for the distribution of the assets by such person otherwise than according to the provisions of the Bankruptcy Law, is a plain and palpable fraud on such law and upon the creditors who are excluded or disappointed or who may be delayed or hindered thereby. This section is more or less similar to the language used in S. 53 of the Provincial Insolvency Act, 1920. It is not disputed that the word "void" found in S. 55 of the Act has been held by decisions of Court to mean voidable. It can therefore, be seen that only in circumstances that are contemplated in the above section, the power has been conferred upon the Insolvency Court to avoid the transfers affected by the insolvent, at the instance of the Official Assignee. It is further seen that under S. 55 of the Act the question of any intention on the part of the insolvent to defraud, defeat or delay the creditors is outside the scope of the enquiry and once it is proved that the transfer has taken place within two years of the order of Adjudication, the Official Assignee has a right of avoidance of the transfer. This is evidently on the basis that where the transfer precedes insolvency proceedings by a short period, it may reasonably be presumed that the insolvent must have anticipated that he was running into financial difficulties and must have affected the transfer so as to place his property beyond the reach of the creditors.

5. S. 7 of the Act reads as follows:

Subject to the provisions of this Act. the Court shall have full power to decide all questions of priorities, and all other questions, whatsoever, whether of law or Tact, which may arise in any case of insolvency coming within the cognizance of the Court, or which the Court may deem fit, expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of

property in any case.

This section is similar to S. 4 (1) of the Provincial Insolvency Act, 1920, except for the fact that the word "title" is not found in S. 7 of the Act. While it is the contention of the Official Assignee that S. 7 of the Act confers very wide powers to decide any question whatsoever whether of law or fact arising in the course of insolvency, the stand of Mr. Subrah-manyam is that due importance should be given to the words "subject to the provisions of this Act" contained in S. 7 of the Act and if so done S. 7 should be controlled by the provisions of S. 55 of the Act. Consequently, to the matter of annulment of transfer effected by the insolvent, the jurisdiction of the Insolvency Court is confined to those transfers which had been affected within two years prior to the date of adjudication and which are not covered by the exceptions found in S. 55 of the Act. I am of the view that the powers of the Insolvency Court under S. 7 of the Act are controlled and restricted by Ss. 53, 55, 56 and 57 of the Act. This is clear from the opening words of S. 7 of the Act "subject to the provisions of this Act". These words have been deliberately introduced by the Legislature to define and limit the extent of the jurisdiction intended to be conferred upon the Insolvency Court. If the Legislature did not intend to restrict the jurisdiction of the Insolvency Court to determine the legality and propriety of transfers effected more than two years before the order of adjudication, there was no purpose at all in enacting S. 55 of the Act and the section itself would become a surplusage. This conclusion of mine is supported by high authority.

6. I may first refer to the Full Bench decision in *Anwar Khan v. Muhammad Khan* 51, All, 551 which supports the contention put forward by the Official Assignee. There, a receiver in insolvency having attached house as the property of the insolvent a stranger to the insolvency proceedings intervened and claimed to have purchased the house from the insolvent four years prior to the order of adjudication. The receiver pleaded that the sale deed was fictitious, fraudulent and without consideration. The question arose whether the matter could be tried and decided by the Insolvency Court, or whether the receiver must seek his remedy by a regular civil suit brought on the basis of S. 53 of the Transfer of Property Act. The following two questions of law were referred for being answered by the Full Bench: (1) Whether an Insolvency Court can try a question of title raised on the basis of a transfer which took place more than two years prior to the adjudication, having regard to the provisions of S. 53 of the Insolvency Act. (2) Would it make any difference if the receiver alleges that no transfer had been intended from the very beginning and no title had passed, the transaction being a mere paper transaction and void? The first question was answered in the affirmative by the majority, viz., Dalai, J. and King, J. (Sen, J. dissenting). The majority held that in view of the answer to the first question being in the affirmative, the second question did not arise for consideration. It may be stated that the question, arose under Ss. 4 and 53 of the Provincial Insolvency Act, 1920 and S. 53 of the Transfer of Property Act, Dalai, J. observed as follows:

I am of opinion that S. 4 (of the Provincial Insolvency Act) deals with jurisdiction, and the jurisdiction will be circumscribed, only by subsequent sections as deal with the jurisdiction of the Insolvency Court, but only lays down rules as to the manner in which evidence should be considered in certain cases arising in that Court. Those sections, therefore, in my opinion, do not control the provisions of S. 4. These words are used to limit the power of the insolvency Court as it is limited, for instance, by the proviso to S. 56 that nothing in that section shall be deemed to authorize the Court to remove from the possession or custody of property any person whom the insolvent has not a present right so to remove.

It may be mentioned that Dalai, J., had referred to and followed two decisions of this Court in the *Official Receiver v. Sankara-linga* 40 M.L.J. 219 : 1921 Mad. 204 and *Chittammal v. Ponnuswami* 40 M.L.J. 180=23 L.W.94=1926 Mad. 363 King, J., in a separate judgment agreed with Dalai, J. The learned Judge observed as follows:

The Intention of the Legislature in enacting S. 4 (1) seems to have been to confer upon the insolvency Court full power of deciding all questions of title that arise for decision in cases of Insolvency so that there should be no necessity for having recourse to the ordinary Civil Courts. The object probably was to avoid multiplicity of suits and proceedings. Before that section was enacted in 1920 there was a conflict of judicial opinion as to whether the Court had power to determine whether a disputed property belonged to the Insolvent or not. The Calcutta High Court held that the question of title could only be determined by a regular suit. I take It that S. 4 was enacted so as to make it clear that questions of title could be determined by the insolvency Court and that there was no necessity to have the question determined by a regular suit.

As regards the words "subject to the provisions of this Act" the learned Judge observed:

I see no difficulty, therefore, in giving a meaning and effect to the words "subject to the provisions of this Act" without construing them In the restrictive sense suggested by my learned brother Sen, J. in my opinion they do not bar the jurisdiction of the Insolvency Court to decide a question of title under the ordinary law when the special provisions of the Act do not apply.

The learned Judge also stated thus:

In the present ease S. 53 does not apply, alee the sale was transacting ad more than two pears before the order of ad judicator. Hence the insolvency Court certainly cannot annul the sale under S. 53, but I see net reason why the Insolvency Court should not annul it under the general law (e.g., under S. 53 of the Transfer of Property Act) If it is liable to annulment by a Civil Court.

Sen, J. dissenting from the majority view, answered the reference thus:

(1) An Insolvency Court cannot try a question of title relating to a transfer which has taken place more than two years before the order of adjudication, having

regard to the provisions of S. 53 of the Insolvency Act, (2) Where the transfer was intended not to be operative from the beginning and the insolvent had remained in possession of the property; the receiver may apply for its annulments But where the transfer was executed by a proper instrument and was duly registered and was intended to put the property beyond the reach of the creditors, and a third party is claiming under the transfer, such a transaction cannot be treated as a mere paper transaction. In the latter case, S. 53 of the Insolvency Act will apply.

Undoubtedly, the majority opinion supports the stand taken by the Official Assignee.

7. In *Biseswar v. Kanhai Singh* 1932 Pat, 129 the order of adjudication was passed on 8th June, 1927. The Official Receiver among others sought to impeach two transfers which took place more than two years before the presentation of the petition in insolvency, it was contended on behalf of the transferees that the Court has no jurisdiction to annul the said transactions and to make a declaration that those properties belonged to the insolvent and has vested with the receiver. It was contended on behalf of the transferees that the opening words of S. 4 "subject to the provisions of this Act" indicated that the Court in exercising jurisdiction under the section is bound by the limitations imposed by S. 53, in other words, that in every case in which a transaction is challenged such transaction must have taken place within two years of the presentation of the petition in insolvency in order to give jurisdiction to the Court to decide the question of title raised before it. Dealing with this contention the learned Judge of the Patna High Court observed as follows:

S. 4 is controlled by S. 53 only in respect of transfers made by the insolvents. S. 53 deals with a real transfer of the property made by the insolvent whereby title has passed from the insolvent to the transferee. In such cases the law gives power to the Court to annul such real transfers if made within two years of the presentation of the petition, provided they are not transfers made before and in consideration of marriage or made in favor of a purchaser or encumbrance in good faith and for valuable consideration. The transactions that we are now concerned with are alleged by the receiver, not to be transfers at all. It is alleged in one case that although the property was purchased in the name of one Bond Lal, it was really a purchase made by the Insolvents. In the other case it is alleged that although the insolvent purported to execute a deed of sale in favor of Jaikliah Chaudhury, as a matter of fact there was no sale and the property still belongs to the insolvents, S. 53 therefore has absolutely no application to the facts of the present case and the jurisdiction of the Court in dealing with these two transactions under S. 4 is in no way controlled the limitation imposed by S. 53.

The learned Judge again observed:

When a question is raised whether a certain property is a property of the

insolvent or not it is clearly the duty of the Court to determine the question, and the determination of this question is In no way controlled by the provisions of S. 53, As I have already stated, S. 53 deals with cases where title to the property has passed from the insolvent to a third person. The cases we are now dealing with are cases in which the allegation is that the property is still the property of the insolvents and title has not passed to third persons.

It may be noticed that this case makes a clear distinction between real transfers and sham and nominal transfers.

8. In *G.N Godbole v. Mt. Nani Boi* AIR 1938 Nag 544 the question arose whether the Official Receiver was entitled to have declared void a partition which took place in the family of the insolvent nine years prior to the date of presentation of "the insolvency petition under the Provincial Insolvency Act and to pursue the shares which went to the wife and son, in order to satisfy pre partition debts incurred by the insolvent. The learned Judges considered the question whether in a case which had been filed under S. 53 of the Provincial Insolvency Act, the Official Receiver was entitled to fall back on S. 4 of that Act to get the transaction annulled. After referring to the majority view in *Anwar Khan v. Mukammed Khan* 51 All. 551 the learned Judges observed as follows:

We confess that we are unable to follow this distinction, and prefer the reasoning of Sen, J., who says that Ss. 53 and 54 do not merely lay down a rule of substantive law or a rule of evidence favouring the Official Receiver but also confer jurisdiction upon a Court of Insolvency, and hence limit the operation S. 4. The Judge pertinently asks if S. 56 imposes restrictions upon the power of the Court of Insolvency, why not S. 53.

The learned Judges further added:

We are, aware that In *Radhakrishnan Thakur v. Official Receiver* 59 Cal. 1135 after a review of the authorities, the opinions of Mukerji and Sen, JJ. Were not followed, and it was held that the Insolvency Court could decide questions of title where S. 53 had no application. The matter before the Const, however, was a sham or became transaction and not a real but fraudulent one, and so these remarks are really oblate dicta so far as we are now concerned. We would indeed, agree with these remarks of Mukerji, J. In the Calcutta case: "It has been argued that S. 55, clause (c) of the Act militates against the avoidances of transfers under S. 53, Transfer of Property Act. in my opinion, the true interpretation of that section is that insolvency itself will not invalidate the transfer except in cases provided for by the Act it self, but the avoidance of transfers under the general law or under S. 53, Transfer of Property Act is not affected by the section". We have to add to this only that in our opinion such avoidance under the general law or under the Transfer of Property Act must be by separate proceedings and not under the Insolvency Act. In *Biseswar Chaudhuri Vs. Kanhai Singh*, the Judges had to deal with a transaction alleged to be benumb and In fact no transfer at all. However, a clear distinction was drawn

by the Judges between such cases and those of real transfers, and their opinion was that S. 4 was controlled by S. 53 only in respect of real transfers made by the insolvent.

9. A similar question arose for consideration before a Full Bench of the Bombay High Court in *Padmasi Premchand v. Laxman Vishnu* AIR 1949 Bom 129. One, Keshavji Manekchand was adjudicated an insolvent on a petition presented by his creditors on 24th August, 1940, Thereafter, the Official Receiver in insolvency filed three applications for setting aside three deeds of transfer, dated 25th January, 1935, 30th January, 1935 and 30th March, 1932, all in favor of his sons and daughters. It may be stated at the very outset that in this case the Official Receiver challenged these three deeds of transfer on the ground that they were nominal and fictitious transactions and that they were not intended, to transfer the real interest of the insolvent in the properties and that therefore no title passed under these deeds of transfer. In other words, the contention of the Official Receiver was that the transactions were void and not voidable. It was contended before the Full Bench that the Insolvency Court had no jurisdiction to set aside the deeds of transfer under S. 4 of the Provincial Insolvency Act. The learned Judges observed as follows:

In our opinion transactions which are challenged on the ground of their being fictitious or nominal do not fall within the ambit of S. 63; the S. 4 is wide enough to confer upon the Insolvency Court jurisdiction to decide whether these transactions were in fact nominal or fictitious. Unfortunately, the trial Court did not raise the issue in the proper form. The issue it raised was: Has the Court jurisdiction on its insolvency side to set aside the trusts created? If the transaction is fictitious or nominal, it is not necessary to set it aside. It is not. It was void *ab initio* and all that the receiver in insolvency might want is a mere declaration that in fact those transactions were void and of no effect. Therefore the issue that the trial Court should have considered and should have tried was whether these three transactions challenged by the receiver were nominal and fictitious as alleged by him. If they were nominal and fictitious, then they did not fall within the ambit of S. 53 and could be declared to be void under S. 4, insolvency Act. If they were not fictitious and not void and they were transactions although voluntary, then they would fall within the ambit of S. 53 and not having been challenged within the period required by that section could not be avoided by the receiver in insolvency.

Having thus found that the section is controlled by S. 53 of the Act in cases where the transaction challenged by the receiver were not nominal and fictitious, the learned Judges observed as regards the scope of S. 4 as follows:

It seems to us that after the enactment of S. 4 there can be no doubt as to the jurisdiction of the Court to decide questions of title affecting strangers in cases which are not covered by S. 53 of the Act. It is also important to note that the language of S. 4 is much wider than the language of S. 7 of the Presidency Towns Insolvency Act and also S. 105 of the English Act of 1914. Neither the

English Act nor the Presidency Towns Insolvency Act refers to title in the corresponding sections. Both these sections deal merely with the question priority, it is only the Provincial Insolvency Act of which In terms confers upon the Courts jurisdiction not only to consider questions of priority but also questions of title.

10. In *Madan Kumar and Another Vs. Hari Narain Agrawal and Others*, it was held as follows:

As observed earlier, S. 53 refers to transfers which are only voidable and it does not cover a case where the transfer is claimed to be void since its inception, The bar of two years provided for in S. 53 should not therefore, apply to a transaction which is claimed to be void.

11. The question has come up for consideration before the Supreme Court in *Johri Lal Soni Vs. Smt. Bhanwari Bai*, On 15th October, 1968 one Pyarelal was on his own application adjudged as an insolvent by the additional District Judge, Jodhpur. On 4th January, 1969 the receiver in insolvency moved the Court under S. 4 of the Provincial Insolvency Act for declaring the deed, of gift, dated 7th November, 1961 as void and inoperative inasmuch as it was a sham transaction. It was contended before the Supreme Court that in view of the expiry of provision of S. 53 of the Provincial Insolvency Act, the Insolvency Court had no jurisdiction to determine the question of title, nor could it go into the question of validity of a transfer which was made more than two years before the insolvency proceedings had started. It was submitted that though S. 4 of the Provincial Insolvency Act conferred wide powers on the Insolvency Court, the said power could not be exercised in respect of transfers made during a period beyond two years of the Insolvency proceedings. Fazl Ali, J., after extracting S. 4 of the Provincial Insolvency Act observed as follows:

It would be seen that the section has been couched in the widest possible terms and confers complete and full powers on the Insolvency Court to decide all questions of title or priority, or of any nature whatsoever, which may arise in any case of insolvency. The only restriction which is contained in S. 4 is that these powers are subject to the other provisions of the Act. In other words the position is that where any other section of the Act contains a provision which either runs counter to S. 4 or expressly excludes the application of S. 4, to that extent, S. 4 would become inapplicable.

After extracting S. 53 of the Provincial Insolvency Act, the learned Judge observed thus:

It was submitted that the effect of S. 53 of the Act clearly is that it bars the jurisdiction of the Insolvency Court to determine the validity of any transfer made beyond two years of the transferor being adjudged insolvent. It is no doubt true that the words "within two years after the date of transfer" being voidable as against the receiver does fix a time limit within which the transfer could be annulled by the Court, But a plain construction of S. 53 would

manifestly Indicate that the words "within two years" after the date be voidable as against the receiver" and shall be annulled by the Court clearly connote that only those transfers are excepted from the jurisdiction of the Court which are voidable. The section has therefore made a clear distinction between void and voidable transfers-a distinction which is well-known to law. A void transfer is no transfer at all and is completely destitute of any legal effect; it is a nullity and does not pose any title at all. For instance, where a transfer is nominal, sham or fictitious the title remains with the transferor and so does the possession and nothing passes to the transferee. It is manifest, therefore, that such a transfer is no transfer in the eye of the law. Such transfers therefore, clearly fall beyond the purview of S. 53 of the Act which refers only to transfers which are avoidable. It is well-settled that an avoidable transfer is otherwise a valid transaction and continues to be good until it is avoided by the party aggrieved. For instance, transfers executed by the transferor to delay or defraud his creditors may be avoided under S. 53 of the Transfer of Property Act. Similarly transfers made under coercion, fraud or undue influence may be avoided by the party defrauded. It is only such transfers which if they take place beyond two years of the date of transfer cannot be enquired into by the Court by virtue of S. 53 of the Act. This appears to us to be the plain and simple interpretation of the combined reading of S. 4 and S. 53 of the Act, indeed if a different interpretation is given it will render the entire object of the section nugatory because the Court would be powerless to set at naught transfers which are patently void merely because they had been made at a particular point of time.

Fazal Ali, J then referred to the Full Bench decision in *Anwar Khan v. Muhammad Khan* 51 All, 551 and after extracting the minority opinion of Sen, J., observed thus:

We felt that the view of Sen, J. appears to be the correct interpretation of Ss. 4 and 53 of the Act.

It is significant to state that Fazal Ali J. has approved the dictum laid down in *Madan Kumar and Another Vs. Hari Narain Agrawal and Others*, and *Padmasi Premchand v. Laxman Vishnu Deshpande* 1949 Bom. 129.

12. The resultant position is this: (1) The Insolvency Court cannot try the validity of a transfer which has taken place more than two years before the order of adjudication on the ground that it has been made with a view to defeat and delay the creditors having regard to the provisions of S. 53 of the Provincial Insolvency Act or S. 55 of the Presidency Towns Insolvency Act. (2) Where a transfer was not intended to be operative from the beginning, but was sham and nominal and no title or possession passed to the transferee the Official Assignee may apply for its annulment. But where the transfer was made by a proper instrument, and duly registered and was intended to put the property beyond the reach of the creditors and a third party is claiming under the transfer, such a transaction cannot be treated as a mere paper transaction. In such cases, the remedy of the Official Receiver or Official Assignee as the case may be, will be not to file an

application, under S. 4 of the Provincial Insolvency Act or under S. 7 of the Presidency Towns Insolvency Act, but to file a regular suit to avoid the transaction. In this connection, it may be borne in mind that S. 7 of the Presidency- Towns Insolvency Act is narrower than S. 4 of the Provincial Insolvency Act in the sense that it does not confer jurisdiction on the Court to go into the question of title, as observed in *Padmasi Premchand v. Laxman Vishnu* AIR 1949 Bom. 129

13. Coming to the facts of the present case the Official Assignee does not contend that the release deed executed by the insolvent, the 6th respondent, in favor of respondents 1 to 5 is sham and nominal. On the other hand, his stand is that the release deed has been executed for a grossly inadequate consideration by the Insolvent with intent to defeat and delay the creditors. The petition itself has been filed under S. 53 of the Transfer of Property Act. The release deed is executed before two years of the date of adjudication. In the circumstances, the situation is governed by principle of law enunciated in *Johri Lal Soni Vs. Smt. Bhanwari Bai*,

14. The Official Assignee cited the decision in *Official Receiver v. Alagappa Chettiar* 1946 M.L.J 112 : 59 L.W 52. There an identical question did not arise for consideration. There, the Official Receiver had filed a suit for a declaration that the deed of mortgage executed by the insolvent was a sham and nominal transaction or in the alternative for a declaration that the said deed of mortgage was not binding on the plaintiffs or any of the creditors under S. 53 of the Transfer of Property Act. No other decision directly on point was cited before me. Though in *Anwar Khan v. Muhammad Khan* 51 All 552 two decisions of the Madras High Court, viz, *Official Receiver v. Sankara lingo* 44 Mad 524 : 40 M.L.J 219 and *Chittammat v. Ponnuswami* (49 Mad 762 : 50 M.L.J 180 have been referred to, they are not directly on the point. I therefore uphold the preliminary objection put forward by Mr. Subrahmanyam, and hold that this Court had no jurisdiction to go into the validity of the release deed and the remedy if any, of the Official Assignee is to file regular suit.