

(2011) 02 KAR CK 0055
In the Karnataka High Court
Case No : M.F.A. No. 2873 of 2004

Allam Karibasappa, since deceased by LRs., (Allam
Doddabasappa and Others) and Gavisiddeshwara and Co.

APPELLANT

Vs

Singamasetty Venkataramaiah and Son Bhagavath Guptha,
Singamasetty Bhagavath Guptha, S. Govindamma, since
deceased rep., by her LR., R. Sujatha and The Officer
Receiver

RESPONDENT

Date of Decision : 25-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144, 151, 94
Provincial Insolvency Act, 1920 — Section 4, 5

Citation : (2011) 3 KCCR 2247

Hon'ble Judges : V.G. Sabhahit, J;B.V. Pinto, J

Bench : Division Bench

Advocate : C.V. Nagesh for V.P. Kulkarni, for A1a to A1e, Aditya Sondhi, Holla and Holla, for A1A-A1J and A2, for the Appellant; P.S. Sawkar, S. Srirange Sundarswamy Ramdas Anand for R1 and R2, K.C. Arige, for R3(a), S.S. Naganand, Sr. Cousnel for K.L. Patil, for R4, Y. Lakshmikanth Reddy, for R4 in M.F.A. No. 2873/2004, Y. Lakshmikanth Reddy, for R1, Sriyuths S. Sriranga, P.S. Bawkar Sundarswamy Ram Das Anand, S.S. Nagarale for R2 and R3 and K. Chandrakanth Ariga, for R4(a) in M.F.A. No. 2706/2004, for the Respondent

Judgement

V.G. Sabhahit, J.—These two appeals arise out of the order passed by the Additional District Judge, Bellary, dated 16.02.2004 passed on I.A. XV in I.C. No. 2/75 and Ms. C. No. No. 5/2000, wherein the learned District Judge has allowed the application filed under Sections 144 and 94 read with Section 151 of the CPC in Ms. C. No. No. 5/2000 with costs and has dismissed the application - I.A. XV filed Under Sections 4 and 5 of the Provincial Insolvency Act, 1920 (for short, the Act) in I.C. No. 2/75 with costs. M.F.A. No. 2706/2004 is filed by the applicants in I.A.XV and M.F.A. No. 2873/2004 is filed by the Respondents in Ms. C. No. No. 5/2000.

2. The material facts leading up to this appeal with reference to the rank of the

parties before the trial Court are as follows:

M/s. Gavisiddeshwara and Company, a partnership Firm was constituted by late Sri Allum Karibasappa along with Sri Agadi Lakshminarayana Setty under the partnership deed dated 28.06.1963. The said Firm was reconstituted with three more persons namely, Singamasetty Subbarayudu, P. Govindappa Setty and T.G. Sathyanarayana Setty. Sri Allum Karibasappa was the major partner of the firm and Sri Agadi Lakshminarayana Setty was the convenor of the firm. On 31.03.1974, Sri Sathyanarayana Setty retired from the firm and his share was purchased by Allum Karibasappa for a consideration of Rs. . 95,000/- (book value) and the firm was reconstituted on 01.04.1974 with the other partners. Sri Singamasetty Subbarayudu died on 20.02.1975. At the time of his death, he owed large sum of money to various creditors. Singamasetty Subbarayudu had constituted a firm known as Singamasetty Venkataramaiah Setty and Son. D.L. Chetty and M/s. Provincial Vysya Education Fund (registered), Bellary, initiated insolvency proceedings against the contesting Respondents before the Court of the District Judge, Bellary, in I.C. Nos. 2/75 and M/s. Venkatappa Setty and Company initiated insolvency proceedings against the Respondents herein in I.C. No. 3/75. The Respondents 1 and 2 in M.F.A. No. 2873/2004 were adjudged as insolvents on 25.05.1977 and they were having one anna share in the Firm. It was ordered to be sold and the creditors' claim was satisfied. On 09.08.1977, the original Appellant - Allum Karibasappa filed I.A. XV before the trial Court in I.C. No. 2/75. The original Appellant sought the receiver to accept Rs. . 95,000/- and transfer the one anna share of late Singamasetty Subbarayudu in his favour and contended that there was a concluded contract prior to adjudication and that he was entitled to share. On 04.01.1983, the trial Court allowed I.A.XV and adjudging Singamasetty Bhagawath Gupta and Singamasetty Venkataramaiah and Son (Respondents 1 and 2 in M.F.A. No. 2873/2004) as insolvents and directed the transfer of share of Singamasetty Subbarayudu in the partnership firm of M/s. Gavisiddeshwara and Company, Bellary, in favour of the first Petitioner subject to certain conditions and directed the official receiver to execute a deed of transfer of the one - anna share in favour of the original Appellant. On 11.03.1983, the official receiver executed the deed of transfer in favour of the original Appellant. Being aggrieved by the order of the trial Court dated 04.01.1983 on I.A.XV in I.C. No. 2/75, Respondent Nos. 1 to 3 in M.F.A. No. 2873/2004 filed M.F.A. No. 1048/1983 before this Court. This Court, by order dated 10.06.1983, stayed the operation of the order dated 04.01.1983. However, subsequently, during the pendency of the proceedings before this Court in M.F.A. No. 1048/1983, the learned District Judge annulled the order made by him holding that Singamasetty Bhagwath Gupta and Singamasetty Venkataramaiah as insolvents subject to the proceedings pending before this Court. The Division Bench of this Court, in M.F.A. No. 1048/1983, has set aside the order passed by the learned District Judge on I.A. XV in I.C. No. 2/75 dated 04.01.1983 and has remitted the matter to the learned District Judge by order dated 13.02.1997, which reads as under:

In as much as the order made by the learned District Judge has already been annulled without making use of the directions issued earlier by him and which were under appeal before this Court, it becomes necessary to set aside the order made by the learned District Judge and remit the matter for fresh adjudication on this aspect of the matter, if necessary. It is open to the parties to raise all contentions including the question as to whether an application of this nature is maintainable or not.

Appeal shall stand disposed of accordingly.

Thereafter, the learned Additional District Judge, Bellary, by order dated 16.02.2004 allowed the application filed Under Sections 144 and 94 read with Section 151 of the CPC in Ms. C. No. No. 5/2000 with costs and has dismissed the application - I.A. XV filed Under Sections 4 and 5 of the Act in I.C. No. 2/75 with costs. The learned District Judge has directed Respondent No. 1 - official receiver to execute such an instrument to be duly registered cancelling the registered transfer deed dated 11.03.1983 conveying one anna share of Respondent No. 3 therein in the said partnership firm in favour of the original Petitioner No. 1 therein within three months from the date of the order (16.02.2004). The learned District Judge has further observed that in the event of the office of the official receiver being vacant, it is open to Respondent No. 3 therein to get such a registered deed executed by getting a court Commissioner appointed. The learned District Judge has further directed that the needful expenses for the purpose of such registration would be met by availing the same deposits available in the District Court vide Rs. . 35,000/- dated 19.04.1981, Rs. . 60,000/- dated 25.05.1981 and Rs. . 69,955/-dated 07.02.1983 while observing that the present legal representatives of the deceased Petitioner No. 1 therein (Appellants herein) are entitled to receive the balance. The said order dated 16.02.2004 is impugned in these two appeals.

3. Miscellaneous Petition No. 9/1977, which was later numbered as I.A.XV in i.e. No. 2/75 was filed by the Appellants herein averring that M/s. Gavisiddeswara and Company, Bellary, i.e., the second Petitioner therein, is a registered firm doing the cinema business in Bellary. The firm owns Nataraj and Uma Theatres apart from other landed property in Bellary. Originally, the firm had the following partners with their respective shares shown against their names:

PARTNER

SHARE Rs. A. P.

1

AllumKaribasappa (1st Petitioner)

0 - 3-0

2

AgadiLaxminarayanaSetty

0 - 5-0

3

P. GovindappaSetty

0 - 1-0

4

SingamSettySubbarayudu

0 - 1-0

5

T.G. SathyanarayanaSetty

0-1-0

Clause 9 of the Partnership agreement provides that on retirement by death, insolvency or notice as aforesaid, the other partners shall be given the option to purchase his share of the assets or liabilities as per the books of accounts. Therefore, it was expressly agreed amongst the partners that the retiring partners or partner who is adjudged insolvent should transfer his share only to other partners and not to any outsider. The value of the share of the partners is to be determined as per the books of accounts. One of the partners, T.G. Satyanarayana Setty retired from the partnership firm on 31st March 1974 and his share was purchased as per Clause 9 referred to above by the first Petitioner - Allum Karibasappa as per the then book value of Rs. . 95,000/-. Therefore, the partnership deed had to be amended and a new partnership deed came into existence on 01.04.1974, leaving the name of T.G. Satyanarayana Setty. From 01.04.1974, the first Petitioner's share was 56 Vi % as against 5%. One of the partners of the firm i.e., Singamasetty Subbarayudu died on 20.02.1975. Singamasetty Subbarayudu was in financial difficulties at the time of his death. A month after the death of Singamasetty Subbarayudu, his son - Singamasetty Bhagwat Gupta addressed a letter dated 26.03.1975 to the partnership firm explaining his circumstances and expressed his desire to transfer his father's share to any one of the partners as per Clause 9 of the Partnership agreement. He also requested that he should be paid the same value for his father's one anna share as it was paid to Sri T.G. Satyanarayana Setty. That was also the value of the share of Singamasetty Subbarayudu on that date. The offer of Singamasetty Bhagvath Gupta was communicated to all the partners. The other partners did not accept the offer as they were not interested. The first Petitioner accepted the offer on 22.03.1975 and required Singamasetty Bhagavath Gupta to go over to him with his mother to receive the amount of Rs. . 95,000/-. The said letter of acceptance was dated 22.03.1975 and the letter that was circulated for expressing their opinion to the partners is dated 20.03.1975. The same was communicated to the first Petitioner by the Firm in their letter dated 24.03.1975. The first Petitioner accordingly, wrote a letter to the second Petitioner expressing

his willingness to purchase the share of Singamasetty

Subbarayudu for Rs. . 95,000/- on 25.03.1975. Both the letters of acceptance was communicated to Singamasetty Bhagavath Gupta. Thus, the offer made by Singamasetty Bhagavath Gupta was accepted unconditionally by the first Petitioner on 25.03.1975 and the same was communicated to the firm as well as to Singamasetty Bhagavath Gupta. The contract was, therefore, complete. It is further averred that when the arrangements were made to execute the relevant deeds for the transfer of shares and also for amending the partnership deed accordingly, some of the creditors of Singamasetty Subbarayudu filed insolvency cases in I.C. No. 1/1975 and I.C. No. 2/1975 on the file of the District Court and wherefore, the matter was kept pending. The District Court allowed the said insolvency petitions and directed the Petitioners not to pay any money to Singamasetty Subbarayudu's legal representatives as Singamasetty Bhagavath Gupta and also the wife of late Singamasetty Subbarayudu were adjudged as insolvents by the District Court on 25.06.1977. Therefore, the assets of late Singamasetty Subbarayudu vested with the official receiver, Bellary. The official receiver addressed a letter dated 06.03.1976 to the Petitioners requesting them not to pay any amount to Singamasetty Bhagavath Gupta towards his 1/16th share in the Theatres, but, to pay him and to obtain an official receipt from his office. He also required the Petitioners to deposit a sum of Rs. . 1,062-65Ps. towards the share of the lease amount. The first Petitioner in his letter dated 03.04.1976, appraised the official receiver of the position and requested the official receiver, Bellary, to take steps to transfer the said share in favour of the first Petitioner. On 08.06.1976, the Respondent - official receiver wanted the first Petitioner to produce all the previous correspondence about the sale of share of Singamasetty Subbarayudu. The first Petitioner produced the entire correspondence before the Official receiver on 09.06.1976. The Respondent - official receiver by his letter dated 12.07.1977, directed the second Petitioner to deposit all the amounts that were realized through leasing out the Theatres immediately with him. The second Petitioner again received a letter from the Respondent - official receiver on 02.08.1977 calling upon him to send him a copy of the latest audit report and the balance sheet and the true extract of the account showing the amount due to his share, the present book value of all the movable and immovable properties of the Company/firm, the monthly income from the properties of the company, the total cash balance then in the hands of the second Petitioner etc. In addition to that, the Respondent -official receiver had also called upon the second Petitioner to recognize his rights as a shareholder and not to do anything without his written consent and to furnish an undertaking that no capital expenditure would be incurred and no extension of unit should be taken. It is further averred that the contract of sale and purchase had been complete long prior to the filing of the insolvency petition. No outsider could be a partner as per the partnership deed. The official receiver, Bellary, and the General Body of Creditors are entitled to the value of the share of Singamasetty Subbarayudu Setty, which is estimated at Rs. . 95,000/- as per the

books of accounts. The first Petitioner is prepared to and is willing to deposit the said sum of Rs. . 95,000/- either with the Respondent - official receiver or before the District Court. The general body of the creditors are not entitled to anything more than that and they are not entitled to participate in the management and other affairs of the Firm. Therefore, the application was filed Under Sections 4 and 5 of the Provincial Insolvency Act (hereinafter called "the Act") seeking to accept the value of the share of late Singamasetty Subbarayudu and to execute the relevant document in favour of the first Petitioner transferring the share of Singamasetty Subbarayudu in favour of the first Petitioner.

4. The application - I.A.XV in I.C. No. 2/1975 was resisted by Respondent No. 1, being the official receiver contending that he had called upon the Petitioner No. 1 to produce the alleged original correspondence dated 20.03.1975, 22.03.1975 and 25.03.1975 in support of the alleged offer and acceptance by issuing notice dated 07.04.1976 for his inspection and that the same could not be produced, in spite of the fact that he had offered that they could get back the original records after comparing the same with the copies. Even the reminder issued in that regard on 02.06.1976 did not yield any result. The Petitioners had maintained that the copies produced were the true copies of the originals produced. Thus he was to apprehend that either the originals were not in existence or were incomplete. The official receiver has also pleaded that the contended book value was seemingly incorrect in as much as 1/16th share of T.G. Satyanarayana Setty said to have purchased at Rs. . 95,000/- was bound to be denied, for, as a matter of fact, it was so purchased for consideration of Rs. . 1,40,000/- as per the information. Even otherwise, the book value at Rs. . 95,000/- as in the year 1974 was to be on higher side by the time it was to be in 1977 and wherefore, he sought for dismissal of the petition.

5. Respondent No. 1 filed additional objections statement reaffirming the very contentions made in the original objections statement by pleading specifically that Respondent No. 3 alone had no absolute right to part with the contended 1/16th share in as much as, his mother was not a party to the said contract and that the share of Respondent No. 4 was to vest in him. Further, it also came to be clubbed with the said contended contract, which was void in view of the applicability of the provisions of Sections 53, 54 and 54-A of the Act.

6. Respondent No. 3 filed objections denying the averments made in the application and pleaded that by 1975 and subsequently, the value of share was increased in as much as the market value was of about Rs. . 3,50,000/- and according to him, the share of the said erstwhile partner of T.G. Satyanarayana Setty that was sold was for more than Rs. . 1,40,000/-, whereas, a small amount was brought on book of accounts. He has further stated that due to the sad demise of his father while in heavy indebtedness, the creditors of the family were pressing him for settlement of their debts. He was under the belief that the Petitioners, being his well wishers would help him. Petitioner No. 1 asked him to sign on the blank papers assuring that the same would be filled up with

necessary contents so as to bring the creditors ground. Thus, he had signed on blank papers somewhere in 1976 during the pendency of the insolvency applications and unfortunately, the signed papers were fraudulently made use of by the Petitioner No. 1 with connivance of remaining partners to create contended sale of his 1/16th share for grossly inadequate consideration of Rs. . 95,000/-. It was further averred that he had never received any communication of the acceptance of the alleged offer. Per contra, it has been pleaded that Agadi Lakshminarayana, being the convenor of Petitioner No. 2 was one of the power of attorney holders of him (Respondent No. 3) and that he and Petitioner No. 1 colluding together had forged the document dated 20.03.1975 and to suit the said claim, further communications dated 24.03.1975, 25.03.1975 and 06.03.1976 were created regarding the alleged offer and acceptance. AH that the conduct of the said convenor was bound to show that all those documents are fabricated and that they had cheated him (Respondent No. 3). He had not executed any document offering the transfer of such share nor there was acceptance and thus, there was no concluded contract. It is further averred that his mother, being Respondent No. 4 had not been adjudged as insolvent in as much as the matter was pending before this Court in M.F.A. No. 701/1977 and that under the circumstances, adjudicating of the same made by the Petitioners would amount to violating the order of this Court. He has denied that there was concluded contract and sought for dismissal of the petition with costs.

7. Respondent No. 4 filed objections contending that her son - Singamasetty Bhagawath Gupta (Respondent No. 3) has not entered into contract and that she having succeeded to the share of her late husband in the said firm had not either offered nor agreed to part with such share. Thus, she also sought for dismissal of the petition with costs.

8. Having regard to the above said pleadings with regard to I.A.XV in I.C. No. 2/75, the following points for determination were framed by the learned District Judge:

- 1 In view of annulment of adjudged insolvency of Respondent Nos. 2 and 3, does necessity still exist to consider this I.A.XV ?
2. If so, has this Court jurisdiction to entertain I.A.XV ?
3. Whether the application vide I.A.XV in the present form is tenable ?
4. Whether the original Petitioner No. 1 had been able to prove that the present Respondent No. 3 Singamasetty Bhagawath Guptha did execute Ex.P4 the deed of offer on 20.03.1975, offering to transfer share of one anna of his late father Singamasetty Subbarayadu in the said partnership firm to any one of the remaining partners on record ?
5. If so, whether the original Petitioner No. 1 had accepted the said offer ?
6. Whether the said transactions as covered by Exs.P4 and P6 were protected by the provisions of Section 55 of the Act ?

7. If yes, whether the relief sought in I.A.XV deserves to be granted ?

8. What order ?

9. The application - Ms. C. No. No. 5/2000 was filed by Respondents 2 to 4 supported by the memorandum of facts that in the event the said I.A.XV fails, the said sale deed (registered transfer deed dated 11.03.1983) would come in the way creating confusion and wherefore, it was essential to make it inoperative or else irreparable loss would be caused to them. It is averred in the said application that Respondent No. 1 - official receiver did execute registered transfer deed on 11.03.1983 conveying the share of one anna that stood in the name of late Singamasetty Subbarayadu in favour of the original Petitioner No. 1 in pursuance of the order passed on I.A. XV on 04.01.1983, Respondents 2 to 4 came up with interim application under the provisions of Sections 144 and 94 read with Section 151 Code of Civil Procedure, praying to direct the official receiver to execute a document cancelling the sale deed executed by him or alternatively send the orders of I.A.XV to the registering authority with suitable directions, in the event of dismissal of I.A. XV in I.C. No. 2/1975.

10. The application - Ms. C. No. 5/2000 was resisted by the legal representatives of the original Petitioner No. 1 1(a), 1(c) and 1(d) have come up with the counter. They contended that neither the adjudication of insolvency dated 25.06.1977 nor its subsequent annulment dated 20.04.1996 nor setting aside of the order passed by the District Court on I.A. on hand vide judgment of this Court in M.F.A. No. 1048/1983 dated 13.02.1997 would give right to Respondents 2 to 4 of any kind in respect of the said transfer deed that has already been executed by the official receiver being Respondent No. 1 in favour of the original Petitioner No. 1 in regard to the said one anna share of late Sigamasetty Subbarayudu in the said partnership firm. It is further averred that as the official receiver - Respondent No. 1, in whom the estate of the insolvents was vested and once the said deed has been executed in accordance with the concluded contract, the District Court cannot entertain any application to cancel the same or to give any direction in the matter. It is further averred that on demise of father of Respondent No. 3, Respondent No. 3 - Singamasetty Bhagawath Gupta was a partner in the said partnership firm in place of his father and as he was adjudged as insolvent, he ceased to be a partner from the date of adjudication and therefore, he did not have any right to maintain the application and the remedy, if any would be to get the sale deed cancelled, if so advised on any of the grounds known to law in the appropriate Civil Court and accordingly, sought for dismissal of the application with costs.

11. Having regard to the contentions urged in the application - Ms. C. No. 5/2000 and the objections to the said application, the following points for determination were framed by the learned District Judge:

1. Whether this Court ceases to have jurisdiction to entertain the application preferred in this Ms. C. No. No. 5/2000 ?

2. If I.A. XV in I.C. No. 2/75 deserves to be dismissed, whether there is a need for issuance of directions to the Respondent No. 1 official receiver to execute such document cancelling the deed of transfer dated 11.03.1983 ?

3. If not, whether alternatively this Court is bound to send such order on I.A.XV to the registering authority with suitable directions ?

4. What order ?

After remand for consideration of I.A.XV, the parties adduced further evidence and thereafter, Ms. C. No. No. 5/2000 was filed. The learned District Judge after considering the contentions of the learned Counsel appearing for the parties and on appreciation of the evidence adduced before him, by order dated 16.02.2004, answered the points framed on I.A.XV in I.C. No. 2/75 as follows:

Point No. 1 Affirmative

Point No. 2 Affirmative

Point No. 3 Affirmative

Point No. 4 Negative

Point No. 5 Negative

Point No. 6 Negative

Point No. 7 does not survive for Consideration

Point No. 8 As per the final order

The learned District Judge answered the points for determination framed in Ms. C. No. 5/2000 as follows:

Point No. 1 Negative

Point No. 2 Affirmative

Point No. 3 No need to consider

Point No. 4 As per final order

and accordingly, dismissed the application - I.A.XV filed Under Sections 4 and 5 of the Act in I.C. No. 2/1975 with costs and allowed the application - Ms. C. No. 5/2000 filed Under Sections 144 and 94 read with Section 151 of the CPC with costs. Being aggrieved by the said order passed by the learned District Judge dated 16.02.2004, these two appeals are filed.

12. We have heard the learned senior counsel appearing for the Appellants and the learned senior counsel appearing for the Respondents.

13. The learned senior counsel appearing for the Appellants submitted that the orders passed by the learned District Judge impugned in these appeals are erroneous and contrary to law and are liable to be set aside. The learned senior

counsel submitted that as per the terms of the partnership deed, whenever there is death of a partner, his share can be sold only to other partners and not to an outsider and the correspondence between the parties would clearly show that there was offer and acceptance for the purchase of the share of deceased Singamasetty Subbarayudu in respect of one anna share in the assets of the partnership firm on the basis of the value shown in the accounts. During the pendency of M.F.A. No. 1048/1983, the sale deed has been executed in favour of the Appellants by the official receiver as per the order of the Court on 11.03.1983 and the said fact was suppressed by the Respondents in M.F.A. No. 1048/1983, which was disposed of on 13.02.1997 and since the said conduct was not brought to the notice of the Court, this Court has set aside the order on I.A.XV and remitted the matter to the trial Court for consideration of the application, if necessary. Further, the learned senior counsel submitted that in view of the provisions of Section 37 of the Act, the conveyance executed by SingamaSetty Bhagwath Gupta in favour of the Appellants is saved. Section 37 of the Provincial Insolvency Act reads as follows:

37. Proceedings on annulment: (1) Where an adjudication is annulled, all seals and dispositions of property and payments duly made, and all acts therefore, done by the Court receiver, shall be valid; but subject as aforesaid, the property of the debtor, who was adjudged insolvent, shall vest in such person as the Court may appoint, or in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein on such conditions (if any) as the Court may, by order in writing, declare.

(2) Notice of every order annulling an adjudication shall be published in the official Gazette and in such other manner as may be prescribed.

The learned senior counsel, in support of his contention has relied upon the decision of the Hon''ble Supreme Court in Sri Babu Ram Alias Durga Prasad Vs. Sri Indra Pal Singh (Dead) by Lrs., , wherein the Hon''ble Supreme Court, while considering the provisions of Sections 37, 43(1) and 35 of the Act, has held that where official receiver reported that all debts had been cleared by the debtor, court would be bound u/s 35 to annul adjudication of the debtor as insolvent and debtor can apply for annulment u/s 43(1) of the Act and consequently, Section 37 will apply. When all the debts having been cleared and the Court not ordering vesting of the debtor''s property in Official Receiver or any other person, it was held that the property and rights of the debtor shall revert to the debtor with retrospective effect from the date of filing of the insolvency petition by the creditor. Where Plaintiff debtor issued notice to the creditor thereby exercising his option for repurchase of the property already sold by him under agreement of sale and thereafter filed a suit for specific performance of the agreement relating to reconveyance at the time when he was an undischarged insolvent and thus the entire action was incompetent, held, by operation of Section 37 the exercise of option and filing of suit would stand revalidated retrospectively. The Hon''ble Supreme Court has also analyzed the provisions of Section 37 of the Act in the

said case. The learned senior counsel further submitted that even assuming that the transaction is not saved u/s 37 of the Act, without prejudice to the said arguments, the sale deed executed in respect of the deceased Singamasetty Subbarayudu's share in the partnership firm on 11.03.1983 by the official receiver has not been set aside in M.F.A. No. 1048/1983 and since the order has not been set aside, there is no specific order as to what happens to the sale deed executed in favour of the Appellants. The said sale is saved. Further, the learned senior counsel appearing for the Appellants submitted that Exs.P4 and P6 would clearly show that there was offer and acceptance for the purchase of the deceased partner's share in the property for book value and thereafter, the amount has also been deposited and the official receiver, subsequent to passing of the order by the learned District Judge on I.A.XV, has executed the sale deed on 11.03.1983 and wherefore, the Appellants, having concluded the contract in their favour are entitled to have the sale deed executed and mere annulment of the insolvency would not in any way affect his rights. The learned senior counsel has also relied upon the decision of the Hon'ble Supreme Court in Arora Enterprises Ltd., and others Vs. Indubhushan Obhan and others, , wherein the Hon'ble Supreme Court has held that once the insolvency is annulled and its effect is wiped out and the property of the insolvent reverts in him retrospectively from the date of the vesting order, but, thereby, the suit and judicial orders passed in the matter are not rendered null and void automatically until the same declared invalid in appropriate proceedings. The learned senior counsel further submitted that the learned District Judge has not at all considered the material on record and has proceeded to pass an erroneous order rejecting the application for execution of the sale deed in favour of the Appellants and I.A.XV did not survive at all as the sale deed has already been executed and in view of the submissions made by him, the question of restitution of the application filed by the contesting Respondents would not arise and wherefore, the order passed by the learned District Judge is liable to be set aside.

14. The learned senior counsel appearing for the contesting Respondents submitted that Section 37 of the Act has no application to the present case as the sale deed dated 11.03.1983 has nothing to do with the declaration of insolvency and annulment of the order by subsequent order. The division Bench of this Court by order dated 10.06.1983, has set aside the order passed on I.A.XV, which was allowed and has remitted the matter to the trial Court for fresh Respondents consideration and as a consequence of the same, I.A. XV gets revived and the same has been rightly considered by the trial Court and the orders impugned in these appeals passed by the learned District Judge are justified. The learned senior counsel further submitted that it was necessary to subsequently set aside the sale deed dated 11.03.1983 executed in favour of Allum Karibasappa as the very order which permitted the official receiver to execute the sale deed has been set aside in M.F.A. No. 1048/1983. A perusal of Exs.P4 and P6 and the other material on record would clearly show that there was no concluded contract and in the absence of any concluded contract, the

question of executing any conveyance in favour of the Appellants would not arise. The learned senior counsel has relied upon the decision of the Hon''ble Supreme Court in *Tukaram Ramchandra Mane(Dead) By L.Rs. Vs. Rajaram Babu Lakule (Dead) By L.RS.*, and observations made in *S. Rout's Commentary on the Provincial Insolvency Act* in support of his contention. The learned senior counsel further submitted that the mother of Singamasetty Bhagavath Gupta was not a party to the contract. The mother and the Appellants succeeded to the property of Singamasetty Subbarayudu on his death, including the value of the estate held in the partnership firm and since mother was not a party to the contract and she had not been adjudged as an insolvent and only Appellant No. 1 had been adjudged as an insolvent, the execution of the conveyance dated 11.03.1983 would not be binding upon the mother and so far as mother'' s share is concerned, the same would not be affected by the sale deed dated 11.03.1983 in favour of the Appellants. Therefore, the order passed by the trial Court is justified. The learned senior counsel further submitted that after the annulment of the insolvency declared on 25.05.1977 by order dated 20.04.1996 and effect of the same in view of the order passed by this Court in M.F.A. No. 1048/1983, the order passed by the learned District Judge is justified and the same does not call for interference in this appeal.

15. In reply, the learned senior counsel appearing for the Appellants submitted that there was a concluded contract, which is clear from Exs.P4 to P6 and the finding of the learned District Judge that the said document is got up and concocted is perverse and arbitrary and unfounded and the said documents have been accepted by the parties and other partners. The order passed by the learned District Judge is liable to be set aside.

16. Having regard to the above said contentions of the learned senior counsel appearing for the parties, the points that arise for our determination in this appeal are:

1. Whether the impugned order passed by the trial Court dismissing I.A.XV filed Under Sections 4 and 5 of the Provincial Insolvency Act, 1920, is justified or calls for interference in this appeal ?

2. Whether the impugned order passed by the trial Court allowing Ms. C. No. 5/2000 filed Under Sections 144 and 94 read with Section 151 of the CPC is justified or calls for interference in this appeal ?

3. What order?

We answer the above points for determination as follows:

Point No. 1: The order passed by the trial Court dismissing I.A.XV is liable to be modified partly as per the final order.

Point No. 2: The order passed by the trial Court in Ms. C. No. 5/2000 is liable to be partly interfered with as per the final order.

Point No. 3: as per the final order for the following:

REASONS

17. We have given careful consideration to the contentions of the learned Counsel appearing for the parties and scrutinized the material on record and appreciated the evidence adduced before the trial Court on the respective applications.

18. The material on record would clearly show that the partnership deed dated 28.06.1963 provides in Clause 9 that on devolution of the share of a partner, the same can be sold to the other partners, but, not to an outsider. There is no dispute that when one of the partners, Sri T.G Sathyanarayana Setty retired from the firm on 31.03.1974, his share was purchased by Allum Karibasappa, an existing partner, for book value of Rs. . 95,000/- and the firm was reconstituted on 01.04.1974 with the other partners. In view of the constitution of the partnership firm "Gavisiddeswara and Company" and the said clause in the partnership deed, when Singamasetty Subbarayudu died on 20.02.1975, he had one anna share in the partnership firm and the same could be sold only to the other existing partners. It is the contention of the Appellants herein that after the death of Singamasetty Subbarayudu, his son Singamasetty Bhagavath Gupta inherited one anna share in the said partnership firm and he offered to sell the said share to the other partners, but, partners other than Allum Karibasappa did not accept the offer and Allum Karibasappa agreed to purchase the share of the deceased Singamasetty Subbarayudu and in support of the said contention, Exs.P4 to P6 are relied upon. It is clear from Ex.P4 dated 20.03.1975 that Singamasetty Bhagavath Gupta, son of late Singamasetty Subbarayudu informed Agadi Lakshminarayana Setty, the Convenor of M/s. Gavisiddeswara and Company about the death of his father - Singamasetty Subbarayudu on 20.02.1975 and has stated that he was put to great problems and difficulties to be solved and his father had borrowed huge amount from the various creditors and it had become impossible for him to clear the debts and his father has left behind him and his mother and he is the only son of his father and he has decided to sell one anna share of his father - Sri Singamasetty Subbarayudu in M/ s. Gavisiddeswara and Company in favour of the existing partners as per the precedent and the clause in the partnership deed. Ex.P5 is the letter dated 24.03.1975 written by Agadi Laxminarayana Setty, the Convenor of M/s. Gavisiddeswara and Company to Allum Karibasappa intimating that himself and P. Govindappa Setty were not interested in purchasing the one anna share of Singamasetty Bhagavath Gupta, son of late Singamasetty Subbarayudu and wherefore, he was at liberty to buy the said one anna share offered by Singamasetty Bhagavath Gupta. Ex.P6 is the letter dated 25.03.1975 written by Allum Karibasappa to Agadi Lakshminarayana Setty, Convenor, intimating him that he was agreeable to buy one anna share of Singamasetty Bhagavath Gupta, son of late Singamasetty Subbarayudu. Ex.P7 is the letter dated 25.03.1975 written by Allum Karibasappa to Singamasetty Bhagavath Gupta agreeing to

purchase his one anna share in the partnership firm as per the book value, which was estimated as Rs. . 95,000/-. Therefore, according to the Appellants herein, the said offer and acceptance had culminated into a contract and there was a concluded contract. However, it is the contention of the Respondents that the said documents were not executed by Singamasetty Bhagavath Gupta and they are concocted for the purpose of this case taking advantage of the signatures of Singamasetty Bhagavath Gupta taken on the ground that intimation had to be sent to several authorities regarding the death of Singamasetty Subbarayudu as partner of M/s. Gavisiddeswara and Company.

19. The material on record would further show that since Singamasetty Bhagavath Gupta and his mother, who succeeded to the share of Singamasetty Subbarayudu were unable to pay the creditors, Insolvency Case Nos. 2 and 3 of 1975 were filed on the file of the District Judge, Bellary. The learned District Judge, Bellary, after detailed consideration of the material on record, held that Respondents 1 and 2 in I.C. Nos. 2 and 3 of 1975 -Singamasetty Bhagavath Gupta and Singamasetty Venkataramaiah and Son had committed an act of insolvency and accordingly, declared them as insolvents by order dated 25.06.1977 and appointed the Official Receiver, Bellary, as the receiver of the property of the insolvents, which included the share of Singamasetty Bhagavath Gupta in the said partnership firm - M/s. Gavisiddeshwara and Company. In the meanwhile, application - I.A.XV was filed by Allum Karibasappa and M/s. Gavisiddeshwara and Company, by its convenor - Agadi Laxminarayana Setty stating that in view of the concluded contract, since Singamasetty Bhagavath Gupta had been declared as insolvent by order of the learned District Judge dated 25.06.1977, official receiver may be directed to execute the sale deed in respect of one anna share of Singamasetty Subbarayudu, which was inherited by Singamasetty Bhagavath Gupta in favour of Allum Karibasappa, who had deposited the book value of the said share at Rs. . 95,000/-. The said application was allowed by the learned District Judge, Bellary, by order dated 04.01.1983 directing the Official Receiver was execute a deed of transfer of the share of late Singamasetty Subbarayudu in the partnership firm -M/s. Gavisiddeswara and Company, Bellary, in favour of the first Petitioner therein - Allum Karibasappa on the first Petitioner depositing the interest at the rate of 12% per annum on Rs. . 95,000/- from 22.03.1975 till 19.04.1981 and at the same rate from 20.04.1981 till 25.05.1981 on Rs. . 60,000/-. As per the said order dated 04.01.1983, the sale deed has been executed by the Official Receiver, Bellary, in favour of Sri Allum Karibasappa on 11.03.1983. Against the said order dated 04.01.1983 allowing I.A.XV, Singamasetty Venkataramaiah and Son, Singamasetty Bhagavath Gupta and Singamasetty Govindamma filed M.F.A. No. 1048/1983. However, the fact of execution of the sale deed dated 11.03.1983 was not brought to the notice of this Court in M.F.A. No. 1048/1983. In view of the subsequent event that the order dated 25.06.1977 declaring Singamasetty Bhagavath Gupta and Singamasetty Venkataramaiah and Son as insolvents was annulled by the learned District Judge by order dated 20.04.1996, this Court

disposed of the said appeal - M.F.A. No. 1048/1983 by order dated 13.02.1997 and passed the following order:

Inasmuch as the order made by the learned District judge has already been annulled without making use of the directions issued earlier by him and which were under appeal before this Court, it becomes necessary to set aside the order made by the learned District judge and remit the matter for fresh adjudication on this aspect of the matter, if necessary. It is open to the parties to raise all contentions including the question as to whether an application of this nature is maintainable or not.

Thereafter, I.A. XV was heard along with Ms. C. No. 5/2000, which was filed by Respondents 2 to 4 in I.A.XV Singamasetty Venkataramaiah and Son, Singamasetty Bhagavath Gupta and S. Govindamma seeking to set at naught the registered transfer deed dated 11.03.1983 in the event of dismissal of I.A. XV.

20. Having regard to the above said admitted facts, it is clear that the fact that Singamasetty Subbarayudu died on 20.02.1975 leaving behind his wife Smt. Govindamma and Singamasetty Bhagavath Gupta and they succeeded to the share of Singamasetty Subbarayudu including one anna share in M/s. Gavisiddeshwara and Company is indisputable. The fact that the sale deed has been executed by the official receiver when Singamasetty Bhagavath Gupta was declared as insolvent in I.C. Nos. 2 and 3 of 1975 on the file of the District Judge, Bellary, by order dated 25.06.1977 is also not in dispute. The fact that as per the order duly passed by this Court on 04.01.1983 on I.A.XV filed by Allum Karibasappa and M/s. Gavisiddeswara and Company, the sale deed dated 11.03.1983 has been executed by the Official Receiver, Bellary, in favour of Allum Karibasappa in respect of one anna share of late Singamasetty Subbarayudu in M/s. Gavisiddeswara and Company is also not in dispute. Therefore, the effect of the order dated 20.04.1996 annulling the order dated 25.06.1977 declaring Singamasetty Bhagavath Gupta as insolvent upon the sale deed dated 11.03.1983 executed by the Official Receiver in favour of Allum Karibasappa during the period when Singamasetty Bhagavath Gupta had been adjudged as insolvent as per the order of the learned District Judge dated 25.06.1977, which was later annulled by the District Judge by order dated 20.04.1996, has to be considered. The Hon'ble Supreme Court while interpreting the provisions of Section 37 of the Provisional Insolvency Act, 1920 in Sri Babu Ram Alias Durga Prasad Vs. Sri Indra Pal Singh (Dead) by Lrs., has laid down as under:

26. Inasmuch as Sub-clause (1) of Section 43 requires the court to apply Section 37 of the Act in the event of passing an order of annulment, it is next necessary to refer to that section. Sub-clause (1) of Section 37 states that where an adjudication is annulled, all sales and dispositions of property and payments made, and all acts theretofore done, by the court or Receiver, shall be valid; but, subject as aforesaid, the property of the debtor who is adjudged insolvent shall vest in such persons as the court may appoint, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interest

therein on such conditions (if any) as the court may, by order in writing, declare.

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33. We may here also refer to two other cases. In *Ratnavelu Chettiar v. Franciscu Udayar Somayya, J.* pointed out that it was clear that the legislature wanted the annulment to be retrospective. Otherwise, there was no need for the clause-validating acts done by the Court or by the Receiver, as they would have in any event been valid because they were done at a time when the insolvent had been adjudicated and before the adjudication was annulled.

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35. Summarising the legal position, the position is as follows. In the case of an annulment u/s 37 read with Section 43 of the Act, where the property is not vested in any other person and no conditions are imposed by the Insolvency Court, the property and rights of the insolvent stand restored or reverted to him with retrospective effect from the date of the filing of the insolvency petition and the insolvency gets wiped out altogether. All acts done by the undischarged insolvent between the date of the insolvency petition and the date of annulment get retrospectively validated. However, all sales and dispositions of property and payments duly made and all acts therefore done by the court or Receiver, will remain valid.

The Hon'ble Supreme Court in *Arora Enterprises Ltd., and others Vs. Indubhushan Obhan and others*, , has laid down in para 10 of the said judgment as follows:

10. Though the arguments addressed before us covered a wide range, we are of the view that it is unnecessary to pronounce in detail on the various aspects involved in the matter at this stage. Suffice it to say that the preponderance of judicial opinion is in favour of the view that the effect of annulling the adjudication in insolvency proceedings, is to wipe out the effect of insolvency and to vest the property retrospectively in the insolvent. The consequence of annulling an order of adjudication is to wipe out altogether the insolvency and its effect. The property will revert in the insolvent retrospectively from the date of the vesting order. We hold that the law is fairly clear to the above extent. But, this does not solve the problem arising in this case. The effect of the suit (independently) filed by the Appellants and the orders passed therein have to be considered. That is a distinct and different matter, which has its own existence and legal impact, unimpaired by the annulment of the insolvency. In other words, by the annulment of the insolvency and wiping out its effect retroactively, in law the suit and the judicial orders passed thereon are not wiped out, or rendered void or a nullity, automatically. The order passed in the suit is not non est or ineffective. In the suit laid by the Appellants (Suit No. 133 of 1989), praying for declaration that the agreement between the Appellants and Indubhushan dated 9-5-1988 is valid and subsisting, that the property should be properly partitioned and that a decree may be passed against Indubhushan -the first Defendant for

recovery of a sum of Rs. 7 lakhs etc; on the demise of Indubhushan on 22-4-1989, the Appellants took out chamber Summons No. 769 of 1989 in the suit (No. 133 of 1989). The court rejected the chamber summons by a composite order on two different and distinct points - (1) the agreement dated 9-5-1988 entered between the Appellants and Indubhushan is void and unenforceable and so, the suit is not maintainable: (2) the amendments sought by the Appellants to implead Defendants 1 (a) to 1(d) as Respondents 1 to 4 in place of deceased Defendant 1 and to add the official assignee as a party Defendant, were disallowed. The legal effect of the said order is that Suit No. 133 of 1989 stood abated against the legal heirs of the first Defendant, Indubhushan and the order passed on 2-2-1990 reached finality. It so happened, as a result of the judicial order passed by the court in a proceeding between the parties to this proceeding as early as 2-2-1990. This order is valid until set aside or annulled, in appropriate proceedings. It cannot be ignored. It will have legal effect of its own, until appropriate proceedings are taken to establish its invalidity and to get it annulled by a person entitled to avoid it. The said order stands even today; it has not been set aside. So long as the said order stands, the abatement of the suit has become unassailable in these proceedings.

When the principles laid down by the Hon'ble Supreme Court in the above referred cases are applied to the above said undisputed facts of the case, it is clear that the order of the learned District Judge dated 20.04.1996 annulling his earlier order dated 25.06.1977 adjudicating Singamasetty Bhagavath Gupta and Singamasetty Venkataramaiah and Son as insolvents and the order passed by this Court in M.F.A. No. 1048/1983, wherein the order of the learned District Judge passed on I.A.XV dated 04.01.1983 pursuant to which, the sale deed dated 11.03.1983 was executed by the Official Receiver in favour of Allum Karibasappa, has been set aside, would not in any way affect the sale deed dated 11.03.1983 that is executed by the Official Receiver in favour of Allum Karibasappa as the said conveyance is saved as per the principles laid down by the Hon'ble Supreme Court as referred to above. The learned District Judge has proceeded on the basis that Exs.P4 to P7 are concocted and fabricated. The said finding is based upon surmises and conjectures as it is clear from the order passed by the Insolvency Court that after the declaration of insolvency by the District Judge, Bellary, in I.C. Nos. 2 and 3 of 1975 dated 25.06.1977, all the assets of the insolvents vested with the Official Receiver and the sale deed, which has been executed on 11.03.1983 has not been challenged nor set aside by the order of the Court and only because of the amount deposited creditors could be discharged and order of insolvency could be annulled and now it is not open to contend that sale deed is void. In view of the above said finding on the facts of the case, the decision relied upon by the learned Counsel appearing for the Respondents is not helpful to the present case. However, the question that is to be considered is as to whether the said sale deed would be binding in respect of the entire extent of one anna share of Singamasetty Subbarayudu in the partnership firm - M/s. Gavisiddeswara and Company.

21. It is clear from Exs.P4 to P7 as referred to above that admittedly, Singamasetty Subbarayudu was having one anna share in M/s. Gavisiddeswara and Company and he died on 20.02.1975 leaving behind his wife - Govindamma and Singamasetty Bhagavath Gupta as his legal representatives. Therefore, Govindamma and Singamasetty Bhagavath Gupta have inherited half anna share each. Govindamma, wife of late Singamasetty Subbarayudu and mother of Singamasetty Bhagavath Gupta has never made any correspondence nor offered to sell the share inherited by her in the one anna share of her husband in the partnership firm - M/s. Gavisiddeswara and Company. On the other hand, the material on record would show that though she was made party in the earlier proceedings including I.C. Nos. 2 and 3 of 1975, it was only Singamasetty Bhagavath Gupta and M/s. Singamasetty Venkataramaiah and Son, who were declared as insolvents and not Singamasetty Govindamma. There is no material on record to show that Singamasetty Govindamma had consented to sell her share along with Singamasetty Bhagavath Gupta in favour of partners of the Firm - M/s. Gavisiddeswara and Company. The material on record would show that Singamasetty Govindamma had filed objections by contending that she had not expressed her willingness to sell the share inherited by her. Since Singamasetty Bhagavath Gupta and Singamasetty Govindamma have succeeded to the estate of Singamasetty Subbarayudu including one anna share in partnership firm - M/s. Gavisiddeswara and Company as class I heirs in equal proportion i.e., half anna share each in the absence of any material whatsoever on record to show that Singamasetty Govindamma, the mother of Singamasetty Bhagavath Gupta had consented to sell the share of her husband in the said partnership firm in favour of the other partners, it is clear that the sale deed dated 11.03.1983 could not have been executed in favour of Allum Karibasappa in respect of the entire extent of one anna share of Singamasetty Subbarayudu of M/s. Gavisiddeswara and Company. The sale deed dated 11.03.1983 executed by the Official Receiver in favour of Allum Karibasappa, though saved by the provisions of Section 37 of the Provincial Insolvency Act as referred to above, the same would be binding only in respect of the half anna share of Singamasetty Bhagavath Gupta as the other half anna share in M/s. Gavisiddeswara and Company was inherited by his mother - Singamasetty Govindamma, who has never consented nor expressed her willingness to sell her share in favour of the other partners and proposal to sell the share in favour of Allum Karibasappa made by Singamasetty Bhagavath Gupta was not made on behalf of his mother - Singamasetty Govindamma. The material on record would show that she has objected to the offer made by her son - Singamasetty Bhagavath Gupta regarding selling of one anna share of Singamasetty Subbarayudu and expressed her unwillingness to sell her share. Therefore, the sale deed dated 11.03.1983 in so far as it conveys one anna share of Singamasetty Subbarayudu in M/s. Gavisiddeswara and Company in favour of Allum Karibasappa cannot be sustained and the said sale deed is to be held to have been conveyed and saved only in respect of half anna share of Singamasetty Bhagavath Gupta and would not be binding in respect of half anna share, which has been inherited by Singamasetty Govindamma and to that

extent, the order passed by the trial Court is to be modified by holding that necessary deed of cancellation of the said sale deed dated 11.03.1983 in so far as it relates to conveyance of half anna share, to which S. Govindamma (Petitioner No. 3 in Ms. C. No. 5/2000), has succeeded after the death of her husband -Singamasetty Subbarayudu. The order passed by the Additional District Judge, Bellary, dismissing I.A. XV and allowing I.A.V. in its entirety is liable to be set aside and accordingly, we answer the points for determination and pass the following Order:

Both the appeals - M.F.A. Nos. 2873/2004 and 2706/2004 are allowed in part. The order passed by the Additional District Judge, Bellary, dated 16.02.2004 dismissing I.A. XV in I.C. No. 2/1975 and allowing Ms. C. No. 5/2000 in its entirety is set aside. It is ordered that both the applications - I.A. XV and Ms. C. No. 5/2000 are allowed in part. In view of our finding that the sale deed executed by the Official Receiver dated 11.03.2003 in favour of Allum Karibasappa (original Petitioner No. 1 in I.A. XV in I.C. No. 2/1975) is valid and binding only to the extent of half anna share held by Singamasetty Bhagavath Gupta, to which he has succeeded after the death of his father -Singamasetty Subbarayudu and the Official Receiver shall execute deed of cancellation of the said sale deed dated 11.03.1983 in so far as it relates to conveyance of half anna share, to which Singamasetty Govindamma (Petitioner No. 3 in Ms. C. No. 5/2000) has succeeded after the death of her husband - Singamasetty Subbarayudu within three months from the date of production of the certified copy of this order. In case the office of the Official receiver is vacant or the Official Receiver does not execute the cancellation deed as directed within three months from the date of receipt of the certified copy of the order, it is open to Singamasetty Govindamma - Petitioner No. 3 in Ms. C. No. 5/2000 to make an application to the Additional District Judge, Bellary, for appointment of Commissioner to execute the cancellation deed in accordance with law.