
(1983) 12 AHC CK 0024
In the Allahabad High Court
Case No : S.A.F.O. No. 29 of 1976

Gajraj Singh

APPELLANT

Vs

Official Receiver and Others

RESPONDENT

Date of Decision : 09-12-1983

Acts Referred:

Limitation Act, 1963 — Article 137

Provincial Insolvency Act, 1920 — Section 28(2), 53

Citation : AIR 1984 All 224

Hon'ble Judges : B.D. Agarwal, J

Bench : Single Bench

Advocate : R.H. Zaidi, for the Appellant;

Final Decision : Allowed

Judgement

B.D. Agarwal, J.—This is an appeal under the second proviso to Section 75(1) of the Provincial Insolvency Act, 1920.

2. One Genda Singh presented a petition on November 6, 1967 u/s 10(13) of the Provincial Insolvency Act, 1920, to be adjudged an insolvent. The petitioner is dead. Respondent No. 4, the daughter, is his legal representative. Respondents Nos. 2 and 3 are the creditors concerned. The petitioner was adjudged insolvent on April 16, 1968 u/s 27 of this Act. A direction was given to the Official Receiver, Bulandshahr, to take possession of his properties. The Official Receiver got attached the land in dispute of which the insolvent had been a bhumidhar. On February 26, 1966 this land had been transferred by Genda Singh under an instrument of gift to Gajraj Singh, the appellant. The gift deed was registered on March 10, 1966. Gajraj Singh filed art appeal u/s 68 against the direction to the Official Receiver to take possession of his land. This was allow ed by the Insolvency Judge. The Official Receiver thereafter made an application u/s 53 on April 26, 1972 to annul the abovementioned deed of gift. This was opposed by Gajraj Singh on the ground that the application was barred by limitation and that the transfer by gift in his favour had been made in good faith and also that the

order of adjudication of insolvency was collusive. The Insolvency Judge recorded the finding that there was no collusion and there was no bar of limitation to the application made by the Official Receiver. The transfer was not for consideration. The application of the Official Receiver was accordingly allowed on September 27, 1973 and in appeal preferred u/s 75(1) by Gajraj Singh, the transferee, that decision was affirmed. Aggrieved, Gajraj Singh has filed this appeal before this Court under the second proviso to Section 75(1).

3. The sole question raised in the appeal before me is whether the application of the Official Receiver under S. 53 dated April 26, 1972 was barred by limitation Section 53 reads as follows:

"Any transfer of property not being a transfer made before and in consideration of marriage or made in favour of a purchaser or incumbrance in good faith and for valuable consideration shall, if the transferor is adjudged insolvent on a petition presented within two years after the date of the transfer, be voidable as against the receiver and may be annulled by the Court."

4. There is no dispute that the gift is not a transfer for valuable consideration, Genda Singh was adjudged insolvent on his petition presented on November, 6, 1967 which was within two years of the deed of gift dated February 26, 1966 and registered on March 10 1966. Section 53, it is not disputed any longer, does not in itself prove a period of limitation within which the transfer may be sought to be annulled. But will that mean that an application to annul a transfer can be made at any time without any rule of limitation being observed? If that were the position under the law it would keep a transfer in the state of perpetual uncertainty and that cannot obviously be the intention behind. The answer to this is furnished clearly in my view by Article 137 of the Schedule to the Limitation Act, 1963.

5. Article 137 provides limitation of three years for an application for which no period of limitation is provided else- where in the particular division contained in the Schedule. The period commences from the date when the right to apply accrues. This provision came up for interpretation before the Supreme Court in the The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma, . The conclusion reached was that Article 137 will apply to any application filed under any Act to a Civil Court. The application need not be under the Civil P. C. for that matter. The view taken to the contrary earlier by the Supreme Court in Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., was specifically departed from. Therefore, the fact that the application in the instant case is under the Provincial Insolvency Act makes no difference for the purpose of the application of Article 137 of the Limitation Act, 1963. The application of the Official Receiver was undoubtedly to the Civil Court and there is no limitation provided for the same u/s 53 of the Provincial Insolvency Act or any other provision for that matter. The limitation of three years will therefore govern. The cause of action will be taken to have accrued on April 16, 1968--this being the date on which Genda Singh was adjudged

insolvent. Section 28(2) of the Provincial Insolvency Act provides that on the making of an order adjudging a person as insolvent the whole of the property of the insolvent shall vest in the Court or in a receiver as the case may be. Upon the adjudication, therefore, of Genda Singh as insolvent on 16-4-1968 the Receiver became competent under the directions of the Court to take possession of such property of the insolvent as belonged to him. This was thus the date when the cause of action accrued to the Official Receiver to assume possession over the land in dispute and commencing therefrom the application made by him on April 26, 1972 was clearly beyond the limitation of three years under the aforementioned Article 137.

6. For the above, the appeal succeeds and is allowed. The order dated 1-9-76 is set aside. The application of the Official Receiver u/s 53 of the Provincial Insolvency Act is dismissed. Costs on parties.