
(1938) 02 BOM CK 0005
In the Bombay High Court
Case No : First Appeal No. 187 of 1935

Ganpatrao Ramji Patil

APPELLANT

Vs

Jehangir Navroji

RESPONDENT

Date of Decision : 02-02-1938

Acts Referred:

Presidency Towns Insolvency Act, 1909 — Section 53, 55

Citation : AIR 1938 Bom 469 : (1938) 40 BOMLR 935

Hon'ble Judges : Wassoodew, J; John Beaumont, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

John Beaumont, Kt., C.J.—This appeal raises a very short point. The plaintiff is suing, on behalf of himself and all other creditors of defendant No. 1, for a declaration that a deed of trust dated January 15, 1929, made by defendant No. 1 in favour of himself and his wife and daughter and four other relatives is void as against the creditors u/s 53 of the Transfer of Property Act. Defendant No. 1 was adjudicated insolvent on February 4, 1932, that is more than two years after the date of the trust-deed, and, therefore, the trust-deed cannot be attacked u/s 55 of the Presidency-towns Insolvency Act, 1909.

2. The learned trial Judge has held that the suit is not maintainable because the plaintiff has not obtained the leave of the Insolvency Court u/s 17 of the Presidency-towns Insolvency Act. That section provides that on the making of an order of adjudication, the property of the insolvent shall vest in the Official Assignee, and then it directs that no creditor to whom the insolvent is indebted in respect of any debt provable in insolvency shall, during the pendency of the insolvency proceedings, have any remedy against the property of the insolvent in respect of the debt or shall commence any suit or other legal proceeding except with the leave of the Court.

3. It is arguable on the language of the section that a suit such as this is not as

suit against the property of the insolvent, because it is a suit against a third party in whom is vested property, which, the plaintiff says, ought to be vested in the insolvent or his trustee in bankruptcy ; it is a suit therefore to increase the assets available for the payment of the insolvent's debt. However, no authority has been cited to us in support of that view of the section, and it is opposed to a decision of the High Court of Madras in Vasudeva Kamath v. Lakshminarayana Rao ILR (1918) Mad. 684. I agree with the reasoning in that case. I think that to allow a suit or proceeding brought by one creditor on behalf of himself and others after adjudication is opposed to the policy of the bankruptcy law, which is to vest all the property in the trustee in bankruptcy and leave the administration of it to him. I think that this suit, at any rate, falls within the general prohibition against the commencement of any suit or any legal proceeding. In my opinion, therefore, the judgment of the Court below was right.

4. A further point is taken that costs which were allowed to the defendants under Schedule III of the Bombay Pleaders Act, 1920, should be limited to one-fourth of the full amount, because it is said that the suit did not decide on the merits the real dispute between the parties. But, in my opinion, the suit did decide on the merits the real dispute. It decided definitely that the plaintiff is not entitled to maintain the suit. I think, therefore, there is no ground for interfering with the judgment of the Court below.

5. The appeal must be dismissed with costs.

Wassoodew, J.

6. I agree