
(1959) 04 AP CK 0016
In the Andhra Pradesh High Court
Case No : A.A.A.O. No. 34 of 1956

Garapati Subbamma

APPELLANT

Vs

The Official Receiver, West Godavari at Eluru and Another

RESPONDENT

Date of Decision : 22-04-1959

Acts Referred:

Provincial Insolvency Act, 1920 — Section 54

Citation : AIR 1960 AP 144

Hon'ble Judges : Sanjeeva Row Nayudu, J

Bench : Single Bench

Advocate : B.V. Subrahmanyam and V.V. Krishnamurti, for the Appellant;

Final Decision : Allowed

Judgement

Sanjeeva Row Nayudu, J.—This Civil Miscellaneous Second Appeal is directed against the judgment and order of the District Judge of West Godavari in Civil Miscellaneous Appeal No. 14 of 1955, on the file of the said Court.

2. The facts of the case briefly are as follows : One Garapati Venkata Rao (second respondent herein) had been adjudicated as an insolvent in I. P. No. 21 of 1952, on the file of the Subordinate Judge's Court, Eluru on 6-3-1953. The appellant herein, who is the mother of the second respondent and who is an old and blind woman aged about seventy years, filed a suit O. S. No. 525 of 1952, on the file of the District Munsiff's Court, Kovvur for her maintenance which she is entitled to obtain from out of the family properties. This suit was decreed and a charge was created on the properties of the second respondent in respect of the maintenance decree amount.

3. The Official Receiver, West Godavari, Eluru filed LA. No. 1344 of 1954, u/s 54 of the Provincial Insolvency Act to set aside this decree on the ground that it is a collusive one intended to defraud the general body of creditors. The learned Subordinate Judge upheld the contention of the Official Receiver that the decree was a collusive one intended to defraud the general body of creditors and

annulled the decree. The learned District Judge on appeal confirmed this judgment of the Subordinate Judge. Hence the present appeal.

4. Both the Courts below have completely misconceived their duties in the matter. The application is one made u/s 54 of the Provincial Insolvency Act which is as follows :

"54. Every transfer of property, every payment made, every obligation incurred and every Judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, with a view of giving that creditor a preference over the other creditors shall if such person is adjudged insolvent on a petition presented! within three months after the date thereof, be deemed fraudulent and void as against the receiver and shall be annulled by the Court.

(2) This section shall not affect the rights of any person who in good faith and for valuable consideration has acquired a title through or under a creditor of the insolvent."

The burden is heavily on the Official Receiver to establish that the section applied to the case and that the maintenance decree obtained by the aged mother against the insolvent could be struck down as a fraudulent preference. It is common knowledge that a mother is entitled to be maintained out of the family properties enjoyed by her son and that the family properties could be charged for ensuring the payment of that maintenance.

In this case, nothing more is done than that a decree was made in favour of the mother, creating a charge on the entire family properties. Ostensibly this is as it should be and there is nothing unusual or extraordinary about it. There is absolutely no material placed on record to indicate that the aged mother lent herself to be a party to gain for herself undue preference or advantage over the other creditors. The passing of the decree for maintenance itself cannot be claimed to be collusive.

At any rate, no evidence has been placed before me even to suggest that it is so. As for the creation of a charge on the entire family properties for the payment of maintenance such a charge being recognised by law, it cannot be said that the maintenance-holder has been unduly preferred. As a matter of fact, the creditors obviously could not proceed against the family properties when the maintenance claims of the dependant members of the family are in existence and not met.

It is to ensure that payment of the maintenance and the realisation thereof, that a charge is created by a Court of law. Mere creation of a charge cannot by any stretch of law or language be regarded as a fraudulent preference in favour of the maintenance-holder. The mere fact that the second respondent namely the son was ex parte does not show anything. The claim for maintenance was For Rs. 200/- per year, a very reasonable sum having regard to the fact that the family owned properties to the extent of Ac. 1-48 cents yielding a sum of Rs. 600/- per

year. Because the claim is reasonable, it is not contested.

The mere fact that a decree was passed ex parte does not by itself indicate that it was fraudulent or collusive. I am clearly of opinion that the-second respondent was justified in remaining ex parte in the maintenance suit filed by his aged mother who apart from being 70 years old was, as already stated, blind. There are, therefore, no merits whatsoever in the application filed by the Official Receiver which ought to have been dismissed in limine.

5. I accordingly allow this appeal and set aside the judgment and order of the Courts below and direct that I. A. No. 1344 of 1954 in I .P. No 21st of 1952 on the file of Sub-Court, Eluru filed by the Official Receiver, Eluru, be dismissed with costs throughout. No leave.