(1956) 05 P&H CK 0015

In the Punjab And Haryana At Chandigarh

Case No : Second Appeal No. 1 of 1956

Karam Singh Natha Singh — APPELLANT

Vs

Mohinder Lal Batta and Others — RESPONDENT

Date of Decision : 25-05-1956

Acts Referred:
Provincial Insolvency Act, 1920 — Section 28(7), 55

Citation : (1956) 05 P&H CK 0015

Hon'ble Judges : Chopra, J

Bench : Single Bench

Advocate : Dalip Chand, for the Appellant; Atma Ram, for the Respondent

Judgement

Chopra, J.—The facts giving rise to this second appeal in an insolvency case; are these:

2. Brij Lal, Respondent 3, was adjudged an insolvent on a petition presented by creditor Kabil Mal, Respondent 2, on 25.12.2005/4.4.1949. Before adjudication but after the presentation of the petition, Brij Lal sold the shop in question, situate in Mandi Ahmedgarh, to Nazir Singh and Bachan Singh sons of Sobha Singh for Rs. 6000/-. The sale-deed was executed and registered on 13.7.1949.

Nazir Singh and Bachan Singh in their turn sold the shop to Karam Singh Appellant for Rs. 6500/-. This took place on 31-1-1950. After the adjudication Shri Mohindar Lal, Respondent 1, the Receiver, succeeded in getting possession of the shop on 26.11.1954.

Karam Singh Appellant then approached the Insolvency Court with the present objection-petition alleging that Brij Lal was no longer the owner and hence the Receiver was not entitled to oust him or to take possession of the shop. The objection-petition was dismissed by the trial Sub-Judge and the order was confirmed in appeal by the District Judge. This is the further appeal filed by Karam Singh.

3. An order of insolvency denudes the insolvent of all right, title and interest to and in the property that once belonged to him. On the order of adjudication, the property vests in the Court or the Receiver. Sub-section (7) of Section 28, Provincial Insolvency Act further lays down that an order of adjudication shall relate back to and take effect from the date of the presentation of the petition on which It is made.

The vesting of the property in the Court or Receiver does not take place until an order of adjudication is made, but once the order is made the effect created by it is taken to relate back, by a legal fiction, to the commencement of the insolvency proceedings. The insolvent no longer remains the owner of the property on the passing of the order of adjudication, and since the order is to relate back to the date of the presentation of the petition the insolvent is not treated as the owner even during the interval of the presentation of the petition and the order of the adjudication.

In other words, the effect of Sub-section (7) of Section 28 is that the adjudication must be deemed to have taken place on the date of the presentation of the petition) for adjudication and that from that date the property vests in the Receiver.

4. It is thus clear that transactions entered into by the insolvent at any time between the commencement of the insolvency and the date of the adjudication order will not prevail against the Receiver whose title by relation back dates from the commencement of the insolvency. The law, however, protects certain transactions between the date of the commencement of insolvency and the date of the order of adjudication, provided the person with whom such transaction takes place has not at the time notice of the presentation of the insolvency petition.

As laid down in the proviso to Section 55, Provincial Insolvency Act, a transfer for valuable consideration of his property by the insolvent during this interval shall be valid and binding on the Receiver only if it is shown that the transferee had no knowledge of the presentation of the petition. The person claiming the benefit of the proviso has to prove (i) that the transfer in his favour was for valuable consideration, and (ii) that he had no notice of the presentation of the insolvency petition.

5. In the case in context, there is not an iota of evidence that Nazir Singh and Bachan Singh at the time of the sale in their favour, which took place a little more than three months after the presentation of the petition for insolvency, had no notice of the presentation of the petition. Nothing of the kind was even alleged by Karam Singh Appellant in his objection-petition or in his statement as his own witness.

Nazir Singh was examined, but no question on the point was put to him. He does not say that he and his brother Bachan Singh had no knowledge of the commencement of the insolvency at the time of the sale in their favour. The insolvent as well as the original vendees are the residents of Mandi Ahmedgarh, where also the shop is situate. The inference is that the vendees knew or should have known of the commencement of the insolvency proceedings.

6. The only point urged by Shri Dalip Chand, learned Counsel for the Appellant, is that the Court ought to have framed a specific issue as to whether the sale in favour of Nazir Singh and Bachan Singh was with or without notice of the presentation of the insolvency petition. The contention has no force. In the first place, in the absence of an allegation that the sale was without any 6uch notice no issue could or should have been framed.

Unless the fact is clearly asserted in its pleading, no amount of proof can help the case of a party relying upon that fact. Secondly, in neither of the Courts below did the Appellant apply or press for the striking of a specific and additional issue. He cannot be allowed to stress the point for the first time in the second appeal. Thirdly issue No. 1, which related to the Plaintiffs'' title and exemption of the shop from attachment and sale, was sufficiently comprehensive. That is the only issue that arose out of the pleadings.

For the perfection of his title, the Appellant ought to have proved that the sale in favour of his vendors was for valuable consideration and without notice of the petition for insolvency. His title depended upon that of his vendors for he could acquire no more than what his vendors had. The Appellant must have been aware of this simple proposition. It cannot, therefore, be said that he was in any way prejudiced by the absence of a clear and specific issue.

7. In the result the appeal fails and is dismissed with costs.

