(1956) 04 AP CK 0014

In the Andhra Pradesh High Court

Case No : Second Appeal No. 2038 of 1952

Lokanatham Srirangamma APPELLANT

Vs

Ganagalla Narayamunma and Others RESPONDENT

Date of Decision : 19-04-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 22
Insolvency Act, 1848 — Section 34(3), 38(1), 51, 51(3), 74

Citation : (1956) 04 AP CK 0014

Hon'ble Judges : Subba Rao, C.J;Viswanatha Sastry, J;Satyanarayana Raju, J

Bench : Full Bench

Advocate : K. Mangachary, for the Appellant; M.V. Nagaramiah, for the Respondent

Final Decision : Dismissed

Judgement

Subba Rao, C.J.—The question. in this second appeal is whether a person who in good purchased the property of a debtor under a sale held in execution after he was adjudged insolvent u/s 74, Provincial Insolvency Act would acquire good title to it against the Receiver.

2. There are conflicting decisions on the question whether such a sale, after the adjudication of the debtor as insolvent, would confer a -rood title on the purchaser. Burn and Mockett JJ in Bachu Mallikarjuna Rao Vs. The Official Receiver and Others, held that a Court executing a decree has no power to sell a judgment-debtor''s property after the judgment-debtor has been adjudicated insolvent because upon adjudication the judgment-debtor''s property at once vests in the Official Receiver and the debtor has nothing to sell.

On the other hand, Venkata Subba Rao and Cornish JJ. observed in Muthan Chettiar and Another Vs. Venkituswami Naicken, at p. 822-823) (B) that as a matter of construction, it would follow that, even in regard to a sale held after the date of adjudication, a bona fide purchaser would under Sub-section

3. of Section 51, Provincial Insolvency Act be protected. Lionel Leach C.J. and Kuppuswamy Ayyar J. in Karamsetti Guravaiah Vs. V. Rangiah, Official Receiver and Others,) (C) agreed with the view of Burn any Mockett JJ. and held that Section 51 (3) applies only to sales held before the order of adjudication.

As the observations of Venkata Subba Rao J. are mere obiter, I would have followed, as I should have, the view expressed in the other two Bench decisions of the Madras High Court. But a further complication in this case is that the adjudication was made u/s 74, Provincial Insolvency Act, whereunder on the admission of a petition by debtor, the property of the debtor shall vest in the Court as Receiver.

Wallace J. in Ramanatha Mudaliar and Another Vs. T. K. Vijayaraghavalu Naidu, held that notwithstanding that fact, a purchaser who has bought the properly in good faith in a court sale after the admission of the petition is protected. As it is a judgment of a single Judge, it may be contended that if the principle behind the aforesaid two Bench decisions is that the sale after adjudication is void because the property vests in the Receiver, the same principle will apply with equal force to a case where it vests in the Court even at the time of the admission of the insolvency petition.

I think it is necessary to have an authoritative decision on the question of the applicability of Section 51 (3) to a case governed by Section 74, Provincial Insolvency Act. I therefore refer the matter to a Bench.

ORDER OP REFERENCE TO FULL BENCH SUBBA RAO, C.J.

(3) This second Appeal was referred by one of us to Division Bench on the ground that the principle accepted in Bachu Mallikarjuna Rao Vs. The Official Receiver and Others, and Karamsetti Guravaiah Vs. V. Rangiah, Official Receiver and Others, (C) may apply to a case arising u/s 74, Provincial Insolvency Act.

After hearing the arguments of learned Counsel we find that not only was a different view expressed by another Division Bench of the Madras High Court in the form of obiter dicta but also that all the other High Courts have differed from the view expressed by the Madras High Court. As this question arises aften, it is advisable to get an authoritative decision of a Full Bench on the following two questions:

(I) Whether Section 51 (3), Provincial Insolvency Act saves the right of a purchaser of a property in good faith after an order of adjudication is made?

(2) Whether there would be any difference in the application of S. 51C3) to a sale held after a property vests in a Receiver u/s 74 (ii), Provincial Insolvency Act

JUDGMENT OF FULL BENCH VISHWANATHA SASTRY J.

5. The questions referred to us are:

1. Whether Section 51 (3) of the Provincial Insolvency Act saves the rights of a

purchaser of a property in good faith after an order of adjudication is made?

2. Whether there would be any difference in the application of Section 51 (3) to a sale held after a property vests in a Receiver u/s 74 (ii), Provincial Insolvency Act.

6. The first question was answered in the negative in two decisions of the Madras High Court Bachu Mallikarjuna Rao Vs. The Official Receiver and Others, and Karamsetti Guravaiah Vs. V. Rangiah, Official Receiver and Others, the latter merely following the former which gives the reasoned in good Tahiti for the conclusion reached. In order to of thieve the arguments advanced against the correctness these decisions it is necessary Jco refer to the rei vant provisions of the Provincial Insolvency Act of 1920) hereinafter referred to as "the Act"''.

Under Section 7 of the Act an insolvency proceed commences with a petition by the debtor or era tore. The petition has to be admitted by the Coin a date of hearing fixed and notice thereof give as provided in S. 19. At the hearing of the Court may either dismiss it or make order of adjudication u/s 27.

On the making of an order of adjudication to whole of the property of the insolvent vests in Court or in a receiver u/s 28(2) and by virtue of Section 28 (7) an order of adjudication relates b: to and takes effect from the date of the presentation of the petition. The rights and remedies availed to a creditor against the debtor or his pro; ties vary according to the different stages read in the insolvency proceedings. u/s 28 (2) order of adjudication takes away the light of: creditor to commence a suit or other proceeding cept with the leave of the Court and on such ten as it may impose.

With regard to pending proceedings, Section 29 pi vides that the Court in which the proceedings pending shall, on proof of the adjudication of debtor, either stay the proceedings or allow them ton in the Receive continue on such as it may impose. If aft j committee the issue of execution against the property of; Cal72: (AIR 1914 debtor but before its sale, notice is given to debtor" in executing Court that an insolvency petition h vent" and (e) ''the been admitted and an application is made for oppose purpose, the Court should direct delivery of tabby law" createtfbj property to the Receiver u/s 52.

What is to happen if the executing Court the property of the debtor with or without knofl "Effect of insolve ledge of the insolvency proceedings? In

words what are the rights of the decree-holder the learned Jud the purchaser under a court sale held pending a; ILR (1938) Mad 1(

is given ferreted these won Section 51 (1) which enacts that the decree-holder is place before the entitled to the benefit of the execution against tension has no doubt Receiver unless the assets are realised before tlthout some dissent date of the admission of the insolvency petitira sections is in the which is the crucial date for this purpose.

Assets realised in the course of the executl&tions that follow." against the debtor after the admission of the Nervations of Baron C solvency petition are available for payment of Is Etc. Ry. Companit the creditors, the execution creditor ranking pal (F). The working passu with the other creditors. Section 51 (3), protects mid is thus stated title of a purchaser of the debtor''s property am "While the Coiffips court sale and runs thus: of an Act of "A person who in good faith purchases the may have of a debtor under a sale in execution shall fiite clear that all cases acquire a good title to it against the ape a different mere there cannot.

7. The interpretation of Section 51(3) has given to a conflict of judicial opinion. The sale plated by Section 51(3) is obviously a court sale he Perusalof ,? after the admission of the insolvency petition far it aspic in the case of a court sale held prior thereto, which if Jap; property would pass to the purchaser irrespectif of any question of good faith. Reading Section 51 sectjpnj and (3) together, it is clear that, although by C0(tm)PelHng son of the court sale being held after the m the deafly soon of the petition the decree-holder gets no or why to the proceeds, the purchaser in good faith the less acquires a good title to the property. If In other words, the rights which the Receiver gets by relation back from the order adjudication, to have vested in him all the property which the debtor had at the date of solvency petition would not prevail against the be conceded 1 rely purposeless and to a court. elucidation, a papillary protected '' (8) The learned Receiver, Ktstai negative in differing sons at some gives a good a court sale unambiguous tutory interprets their natural and unction of the we d to any justify a departs While recognize the words in S. ILR (1938) Ma felt bound "in all cases" in view c group of Sections 28 (2) of the to the property Specific referenceBo sentation and adnps'' m and adjudication in the difference if reference was Matt 52 refer to the ihaser in good faith at a court sale held after the ''mission of the petition. So much has been and ust be conceded for otherwise, S. 51(3) would be Ltirely purposeless. Does it follow that even in _gard to a court sale held after the date of the idjudication, a purchaser in good faith would be .milarly protected u/s 51(3).

8. The learned Judges in Mallikarjuna v. Qffi-ial Receiver, Kistna (A) answered this question in he negative in a considered judgment and as we ire differing from them we proceed to give our arsons at some length. Section 51 (3) in general ;erms gives a good title to a bona fide purchaser it a court sale ''in all cases.'' The words are plain ind unambiguous and, according to the rules of statutory interpretation they have to be understood in their natural and ordinary sense. A literal construction of the words used in Section 51 (3) does not lead to any absurdity or manifest injustice so as to justify a departure from it.

While recognising "the all-embracing character of the words in Section 51 (3)" the learned Judges In ILR (1938) Mnd 1063: (AIR 1938 Mad 34) (A) felt bound to give a restricted meaning to the words "in all cases" as confined to sales before adjudication in view of (a) the heading prefixed to the group of Sections 51 to 55, (b) the provisions of 28 (2) of the Act providing for the vesting of tie to the property of the debtor on his in the Receiver, (c) the decision of the Judi-al

Committee in Raghuhath Das v. Sundar Das, Cal72: (AIR 1914 PC 129) (K) (d) the use of the [word "debtor" in Section 51 (3) as distinguished from and (e) the "anomalous position" and a ''result wholly opposed to the principles of insol-ency law" created by a contrary interpretation.

9. The heading to Sections 51 to 55 of the Act runs thus:

Effect of insolvency on antecedent transactions.

Now the learned Judges (Burn and Mockett, JJ.) Jn ILR (1938) Mad 1063; (AIR 1933 Mad 449) (A) flnterpreted these words as referred to transactions taking place before the order of adjudication. The opinion has no doubt been expressed though not without some dissent, that the heading to a sections is in the nature of a preamble and might be used to explain what is ambiguous in the that follow. Mockett, J. referred to the observations of Baron Channell B. in Eastern Counts Etc. Ry. Companies v. Marriage. (I860) 9 HLC 12 (P). The working rule now followed in is thus stated by Lord Goddard C.J.:

While the Court is entitled to look at the head of an Act of Parliament to resolve any doubt . lay may have as to ambiguous words, the law is clear that you cannot use such headings to have a different effect to clear words of the section here there cannot be any doubt as to their ordinary, meaning" Rex. v. Surrey Assessment Commit-e 19481 KB 28 at p. 32 (G).

10. A perusal of Section 52 shows that the subject exalt with by it has nothing to do with the head-ig under which it appears. It is not as if the leading is an exhaustive or precise statement of '' e effect of the sections that follow. Further there no'' compelling reason why the word "insolvency"

curing in the heading should be equated to "ad-dictation" or why as the result of such paraphrase e words "before adjudication" should be read into 51 (3) after the words "sale in execution".

Specific reference to the several stages of the presentation and admission of an insolvency Ion and adjudication on such petition, has been in the different sections of the Act whenever reference Was material. For instance Sections 51 and 52 refer to the admission of the petition and Sections 53, 54 and 55 to the presentation of the petition and the order of adjudication as the dividing line between a valid and invalid transaction as against the Receiver.

11. In Section 55 there is a proviso that it refers only transactions before the order of adjudication.,. Similarly the words ''before adjudication'' would have been put in after the words ''sale in execution'' or a suitable proviso would have been intended by the Legislature to be confined to purchasers in good faith at court sales held before adjudication.

Far from this being the case, the Legislature uses the comprehensive words "in all cases" so as to extend the protection to all bona fide purchasers at court sales irrespective of whether they were held before or after adjudication. It is not possible to find in the interstices of the heading, any limitation on the wide terms of Section 51 (3).

12. The further reason given by the learned. Judges in Mallikarjuna Rao v. Official Receiver, Kistna (A) was that on an adjudication, the property of a debtor ceased to be his and vested in the Receiver and So far as the executing Court is concerned, there was no property of the debtor which could be sold. The protection given by Section 51 (3) to a purchaser "of the property of a debtor" would not therefore be available to a purchaser at a court sale held after adjudication. This conclusion WHS sought to be reinforced by the uuthorlty of llaghunatha Das v. Sundar Das (E).

The cases to which Section 51 (3) applies are. those where, notwithstanding the insolvency the property of the debtor is directed to be sold by the Court in execution of a decree against him. In such cases the Court purports to sell and the purchaser purports to buy the right, title and interest of the. judgment-debtor. In cases where the insolvency is not brought to the notice of the executing Court the property could not be described otherwise than as chat of the judgment-debtor. Therefore "property of the debtor" in Section 51(3) means the property sold by the executing Court and purchased by the auction purchaser as the property of the judgment-debtor.

It is not as if the insolvent judgment-debtor is civilly dead. In trims connection, it must be remembered that insolvency is entirely the creation of statute, and it is only to the extent to which the Act empowers the Insolvency Court or the Receiver to deal with the property of a debtor and gives a right to the creditors to get a rateable distribution of the realisations of the debtor''s property, that such powers and rights could be exercised. It is. true that on the making of an adjudication order the property of the debtor vests in the Court or receiver u/s 28(2).

It is equally true that u/s 28(7) an order I of adjudication relates back to and takes effect from the date of the presentation of the petition. It ! follows that the property of the debtor vests in the Official Receiver as from the date of the presentation of the petition. But it is open to the Legislature to exempt certain transactions from the operation of Section 28(2) and (7) and it has done so by enacting Section 51 (3). Section 28 (2) and (7) are subject to and are controlled by Section 51 (3) which secures the title of a bona fide purchaser of the property of a debtor at a court sale held in execution of a decree against him.

The learned Judges in Mallikarjuna v. Official Receiver Kistna (A) hold that Section 51 (3) has the effect of overriding Section 28(7) and preventing the operation of "relation back" in cases where an execution sale of the property of the debtor is held between the date of presentation of the petition and the adjudication but it has no effect on Section 28 (2). If Section 51 (3) can override Section 28(7) and prevent its operation, why should it not have the same effect on Section 28(2) also when its language is wide enough to admit of such interpretation. Why should Section 51 (3) be regarded as an exception or proviso to Section 28(7) alone and not to Section 28(2) also? If the intention of the legislature had been to limit the exception provided by Section 51(3) to bona fide purchaser at execution sales held before adjudication particularly when the language as it stands does not work any manifest , injustice or lead to any absurd result. The vesting in the Receiver on adjudication u/s 211 (2) like the vesting by relation back u/s 28(7) is subject to the operation of Section 51(3). Section 23(2) is a general provision while Section 51(3) is a special provision applicable to a particular situation and the special provision must prevail over the general; generalia specialibus non derogant.

13. In Malikarjuna v. Official Receiver, Ki-stna (A) reliance was placed by the learned Judges on the decision of the Privy Council in Raghunath Das v. Sundar Das (E) in support of their conclusion following Anantharama Iyer v. Kuttimalu Ko-vilamma, 30 Mad LJ 611: AIR 1917 Mad 924 (H). In the Privy Council case a judgment debtor whose properties had been attached in execution of a decree was adjudged an insolvent under the Insolvency Act, 1848. Thereupon his properties vested in the Official Assignee. The property was thereafter sold in execution, no notice u/s 248, Code of Civil Procedure, 1882 (corresponding to Order 21, Rule 22, Code of Civil Procedure, 1908) haying been served upon the Official Assignee.

The Judicial Committee held that the execution sale was inoperative to convey any title to the purchaser. In the Indian Insolvency Act there was no provision corresponding to Section 51(3) of the Provincial Insolvency Act, 1920 or Section 34(3) of the Act of 1907 affording protection to the purchaser at the court sale. This was pointed out by Venkata Subbarao J. in Muthan Chettiar and Another Vs. Venkituswami Naicken, who took the view that Section 51 (3) was not controlled by the provisions of Order 21, Rule 22, Code of Civil Procedure, that a court sale of the property of the judgment-debtor after adjudication was not a nullity and that a purchaser in. good faith was protected by Section 51(3) Mockett J. in Mallifcarjuna v. Official Receiver, Kistna (A) averted to this point and observed:

If the word debtor (in Section 51(3)) is to be used as meaning insolvent (i.e.) a person who has been adjudicated, then in spite of the decision of the Judicial Committee in Raghunath Das v. Sundar Das (E) where no provision similar to Section 51(3), Provincial Insolvency Act had to be considered, I should feel constrained to hold that the Indian Legislature intended to give sanctity to sales by the Court in all Cases and that all cases means sales both before and after adjudication.

The learned Judge, however, went on to hold that the word ''debtor'' found in Section 51(3) was inapplicable after adjudication. "Debtor" includes a "judgment-debtor" but there is no other definition of the word in the Act. An insolvent is and remains a debtor even after adjudication and until discharge. The words "debtor" and "insolvent" have been so loosely used in the Act that no inference can be drawn from the use of the word "debtor" in Section 51(3). There are numerous sections where an adjudiciated insolvent is referred to as a debtor. See for example Section 43(1) and (2), 41(1), 38(1), and (5), 36 35, 31(2) 29, and 27(1) and (2).

14. Lastly with due deference to Mockett J., it cannot be said that the interpretation of Section 51 (3) according to its plain and ordinary meaning leads to an "anomalous position" and to position" and to a "result so wholly opposed to principles of Insolvency law". The principles of insolvency law which this Court has to administer are found only in the Act.

17. The answer to the second question therefore be as stated above.

(Note: following the opinion expressed by Full Bench the Division Bench dismissed the appeal with Costs.)

