

(1961) 02 AP CK 0007

In the Andhra Pradesh High Court

Case No : Appeal No's. 65, 66 and 67 and A.A.O. No. 50 of 1957

Nandigam Ramarao and Others

APPELLANT

Vs

Burugupalli Srikrishnamurthi and Others

RESPONDENT

Date of Decision : 27-02-1961

Acts Referred:

Provincial Insolvency Act, 1920 — Section 53, 54, 6, 9, 9(1)
Registration Act, 1908 — Section 47, 75
Trusts Act, 1882 — Section 82

Citation : AIR 1962 AP 226

Hon'ble Judges : P. Chandraskhara Reddy, C.J; Chandrasekhara Sastry, J

Bench : Division Bench

Advocate : B.V. Subrahmanyam and V.V. Krishnamurthy, for the Appellant; I. Balaiah, N. Bapiraju and Venkatapathi Raju, for the Respondent

Judgement

Chandrasekhara Sastry, J.

(1) A. S. Nos. 65, 66 and 67 of 1957 are filed against the judgments and decrees in O. S. No. 72/53, O. S. No. 22/55 and 51/55 respectively on the file of the District Court, "Eluru; C. M. A. No. 50/57 is filed against the order of the District Court. Eluru in I. A. No. 873/56 in I. P. No. 8/55 on its file.

(2) The appellants are the same in all the appeals. The three suits and the application were tried together and the lower court gave a common judgment in all the four cases. The plaintiffs and the defendants 2 and 3 in the three suits are the same. The 1st defendant each suit is a creditor of the 2nd defendant and obtained a decree against the 2nd defendant for recovery of certain sums of money. The second defendant was adjudicated as an insolvent in I.A. No. 873/56 is the official Receiver and the 2nd defendant in each of the three suits is the 1st respondent in it.

The plaintiffs in the three suits are the respondents 2 to 5 in I.A. 873/53. O. S. 72/53 is the suit filed by the plaintiffs to declare that they are entitled to a sum of Rs. 3, 089- 9- 6 being the value of the crops in the plaint schedule lands

realised by the Receiver appointed in O. S. No. 432/ 53 on the file of the Additional District Munsif 's court Eluru, and to issue a permanent injunction restraining the defendant from drawing the said amount from court or from the Receiver.

The two other suits, i.e, O. S. No. 22/55 and O.S.No.51/55 were filed by the plaintiffs to set aside the claim order passed in E.P.No. 558/ 54 on the file of the District munsif's court, Rajahmundry and the claim order in I.A. 1642/53 in E. P. NO 366/53 IN O. S. No. 478/52 on the file of the District Munsif's court Eluru disallowing their claim for the plaint schedule properties.

I. A. 873/56 in I.P. 8/55 isthev application filed by the official Receiver, West Godavari for the annulment of the relinquishment deed dated 7-10-1952 which was registered on 1-12-1954 executed by the 2nd defendant in favour of the plaintiffs on the ground that it was brought into existence fraudulently with the object of delaying and defeating the rights of the general boby of the creditors of the 2nd defendant and to put the property of the insolvent beyond the reach of these creditors.

The plaintiffs 1to 3 are brothers and the 4th plaintiff is their sister. The 2nd defendant is the husband of the fourth plaintiff.

The plaintiffs" case is that the suit property was purchased by them with their own money from one Sri M. V.subbarao and other of Eluru under the registered sale deed, Ex. B-2 dated 19-12-1950 in the name of the 2nd defendant and they have been in uninterrupted possession enjoyment of the same. They stated that the sale deed was taken in the name of the second defendant, who is the brother - in- law of plaintiffs 1to 3 and husband of the 4th plaintiff, benami for their benefit and that no portion of consideration for the sale passed from him.

It is the further case of the plaintiffs in all the suits and in their counter to the official Receiver"s application, that this 2nd defendant executed an agreement in their favour on 14-9-1952 (Ex. A-9) agreement to execute a relinquishment deed in respect of the said properties and that in pursuance of the said agreement, he executed the relinquishment deed dated 7-10-1952 which is marked as Ex. A. 1 in these cases, that when the deed was presented for registration, the 2nd defendant denies execution of the same and that thereupon they filed a suit O. S. No. 41/53 on the file of the District Court, West Godavari, Eluru u/s 77 of the Indian Registration Act for compromise subsequent to the filing of O.S. No. 72/53. They also stated that when the 2nd defendant and his alleged lessees attempted to trespass upon the land and disturb their possession, they filed O.S.132/52 and obtained a decree for permanent injunction restraining them from interfering with their possession and enjoyment of the property, that the 2nd defendant had no manner of right to the said property and that therefore the 1st defendant decree-holder in each of the suits had no right to proceed against the suit property or the crop thereon for realisation of the amounts due under their decrees.

(3) The 1st defendant in each suit pleaded that the plaint schedule properties were purchased by the second defendant with his own money for his own benefit and that he has been in possession and enjoyment of the same in his own right and that the agreement and the relinquishment deed relied upon by the plaintiffs were fraudulently brought into existence with a view to defraud them and the other creditors of the 2nd defendant. He also pleaded that the 2nd defendant has been in possession and enjoyment of their property.

(4) The 2nd defendant also filed a written statement contending that the plaint schedule property belonged to him and purchased by him under the sale deed, original of Ex. B. 2, with his own money, that the purchase is only for his benefit and not at all benami for the plaintiffs & that he himself has been in possession and enjoyment of the same ever since his purchase. He also pleaded that the agreement dated 14-9-1952, a certified copy of which is marked as Ex. A. 9 and the relinquishment deed, Ex. A-1 dated 7-1-52 are forgeries and were brought into existence fraudulently on account of ill-feelings between himself and his wife the 4th plaintiff.

In the Official Receiver's application, I. A. No. 873/56, it is stated that the property which is the subject matter of this litigation really belonged to the 2nd defendant and not to the "plaintiffs and that the relinquishment deed, Ex. A-1 in the plaintiffs' favour is liable to be annulled on the ground that it was brought into existence fraudulently with the object of delaying and defeating the rights of the creditors of the 2nd defendant and to put the property of the insolvent beyond the reach of the creditors.

(5) The main points that arise for determination in these appeals are: (1) whether the sale deed, dated 19-12-50 a certified copy of which is marked as Ex. B. 2 in these suits, is benami for the benefit of the plaintiffs and whether the plaintiffs have title to and possession of the suit property; and (2) whether the relinquishment deed dated 7-1--52 (Ex. A. 1) is liable to be annulled u/s 53 or Section 54 of the Provincial Insolvency Act.

(6) In order to arrive at a decision on the first point, it is necessary to consider the following relevant factors: (1) Motive for taking the sale deed in the name of the second defendant; (2) Custody of three sale deed and the connected vouchers; (3) Passing of consideration; and (4) Possession of the property.

(7-10) (His Lordship after considering the evidence, oral and documentary, proceeded)

(11) We are therefore of the view that no motive was established for asking the sale deed benami in the name of the second defendant and that it is not proved by the plaintiffs that they paid the consideration for the same, but that, on the other hand, it is satisfactorily proved that it is the second defendant himself that paid the consideration. We are also of the opinion that the plaintiffs were not in possession of the lands till the date of the relinquishment deed. We find on a consideration of the evidence oral and documentary and the probabilities of the

case that the 2nd defendant himself purchased the lands in dispute with his own money under the original of Ex. B-2 and that he himself was in enjoyment of the same till about the time of Ex. A-1. This is our finding on the 1st point.

(12) Then, we shall next consider whether the relinquishment deed Ex. A-1 executed by the 2nd defendant in plaintiffs' favour is liable to be annulled u/s 53 or Section 54 of the Provincial Insolvency Act. It is dated 7-10-52. It recites that the sale deed was executed on 19-12-50 nominally in favour of the 2nd defendant, as he was managing the affairs of the plaintiffs have been in possession and enjoyment of those lands and that the plaintiffs themselves paid the major portion of the consideration for the sale deed and that the balance was raised by the plaintiffs themselves by borrowing under a mortgage deed, Ex. B-3 executed by the 2nd defendant in favour of Kurapati Seetharamayya (P. W. 5) on 19-12-1950 and that they got the 2nd defendant execute the mortgage in favour of P. W. 5 because the sale deed stood in the name of the 2nd defendant.

It also recites that for discharging the mortgage in favour of P. W. 5 the 2nd defendant obtained a loan on the security of these lands from the "Co-operative Land Mortgage Bank and that he also contracted debts for cultivation expenses and repairs etc. After reciting all this, the 2nd defendant stated that he thereby relinquished his rights acquired by virtue of the sale deed, dated 19-12-50 got executed in his favour by the plaintiffs. The plaintiffs were to discharge the debts contracted by the 2nd defendant in favour of the Co-operative Land Mortgage Bank and in favour of one Manthena Jagannadha Raju.

It is clear from these recitals that this deed of relinquishment is executed on the basis that the sale deed, Ex. B-2 executed in favour of the 2nd defendant is a benami one and that the real owners of the suit lands are the plaintiffs. We have found that the case of benami set up by the plaintiffs is not proved and that the 2nd defendant himself is the real purchaser under Ex. B-2 and had title to the suit properties. It must therefore necessarily follow that the recitals in Ex. A-1 are all false and were introduced in order to make it appear that the property belonged to the plaintiffs even from the date of Ex. B-2. The falsity of the recitals in this relinquishment deed to a large extent established that Ex. A-1 is a fraudulent one intended to defraud the creditor of the 2nd defendant. No consideration was paid by the plaintiffs under it. They only undertook to discharge a few debts contracted by the second defendant and even if they discharged any of the debts mentioned therein, the plaintiffs cannot be said to be the purchasers in good faith or for valuable consideration. The document itself does not purport to be for any valuable consideration.

But the learned counsel for the appellant relies upon certain proceedings as between the plaintiffs and the second defendant to show that Ex. A-1 is not a collusive document brought into existence for the purpose of defeating the claims of the creditors of the second defendant. Ex. A-1 was first presented for registration to the Sub-Registrar on 2-1-53, but it appears from the evidence that there was a difference between the plaintiffs and the 2nd defendant as to that

time as a result of which the second defendant denied execution of Ex. A-1. Thereupon, the plaintiffs filed O.S. No. 51/53 on the file of the District Court. West Godavari u/s 75 of the Registration Act for compulsory registration of Ex. A-1. In that suit again the 2nd defendant pleaded that the suit property was purchased by him for his own benefit and that the registered sale deed was dated 19-12-50 and that he himself paid the consideration thereafter and that he borrowed Rs. 5,000/- under Ex. B-3 from P. W. 5 and that he discharged the mortgage Ex. B-3 and that Ex. A-1 was not executed by him and that it was fabricated by P. W. 5 in collusion with the plaintiffs and that the recitals therein were all false. But subsequently the plaintiffs and the second defendant agreed to a decree being passed on compromise and a compromise decree dated 16-11-1953 was passed a certified copy of which is marked as Ex. P-8. The terms of the decree provided that the defendant does accept that the suit relinquishment deed was validly executed by him and that the Joint Registrar Eluru be directed to register the relinquishment deed dated 7-10-1952.

The suggestion for the Official receiver and the 1st defendant in each of the suits is that this compromise decree is a fraudulent and collusive one in view of the fact that by that time the 2nd defendant was heavily indebted to others. It is the plaintiffs' case that prior to the relinquishment deed Ex. A-1 the 2nd defendant executed an agreement to relinquish and a certified copy of the alleged agreement is marked as Ex. A-9. We do not see that reason there was for executing a prior agreement to relinquish. The lower court also pointed out that if really the 2nd defendant agreed to execute the relinquishment deed and if he had executed one with his free will, there is no reason why he should resist its registration. Therefore, the lower court inferred that the 2nd defendant was not a willing party to the relinquishment deed. Otherwise, there is no reason why Ex. A-1 was not registered immediately after its execution and why it was presented for registration only on 2-1-1953.

The plaintiffs also relied upon Ex. A-2, a deed of mortgage executed by them in favour of P. W. 5 on 8-10-1952. It is significant that Ex. A-2 purports to have been executed on the next day after Ex. A-1 alleged to have been executed by the second defendant.

(13) We are of the opinion that the lower court is right in thinking that Ex. A-2 was brought into existence to give strength to the relinquishment deed in collusion with P.W. 5.

This relinquishment deed is also sought to be supported by the evidence of P. Ws. 4 and 5. But they were rightly disbelieved by the trial Court because we find they are the persons who have been supporting the plaintiffs. By the time of the compromise decree, the 2nd defendant was heavily indebted to others and that is why he colluded with his wife, the 4th plaintiff and his brother-in-law, plaintiffs 1 to 3 and got a compromise decree passed agreeing to registration of the relinquishment deed. The recitals in Exs. A-1 and A-9 are so made with the object of defeating the rights of the creditors of the second defendant.

In the present litigation, he filed a written statement into suits and he did not care to file a written statement in O. S. No. 22/55. He did not even oppose the application I. A. 837/56. Thus it is clear to us that the 2nd defendant is now colluding with the plaintiffs and that he got the compromise decree in O. S. No. 41/53 passed in collusion with the plaintiffs. The vendors under Ex. B-2 are not summoned and examined by the plaintiffs to speak about the nature of the transaction evidenced by Ex. B-2 and no explanation was given why they were not examined. When the transaction is not a benami one, it is not possible to believe that the relinquishment deed is a bona fide one. The very basis on which the relinquishment deed is executed is found against.

We find that the plaintiffs are not transferees in good faith and for valuable consideration and that Ex. A-1 is avoidable as against the Receiver and is to be annulled by the Court u/s 53 of the Provincial Insolvency Act.

(14) We may point out that Section 54 of the Provincial Insolvency Act does not apply to this case because Exhibit A-1 does not apply to this fraudulent preference for the very obvious reason that the plaintiffs are not the creditors of the 2nd defendant.

(15) We shall next consider the contention raised by the learned counsel for the appellants that I.A. No. 837/56 filed by the Official Receiver West Godavari in I. P. No. 8/55 under Sections 4, 53 and 54 of the Provincial Insolvency Act for annulling the relinquishment deed Ex. A-1 dated 7-10-1952 in favour of the plaintiff is not maintainable for the reason that the said I. P. was filed more than two years after the execution of the deed of relinquishment. It is contended that the said deed is to be annulled u/s 53 of the Provincial Insolvency Act only if the transferor is adjudged insolvent on a petition presented within two years after the date of the transfer sought to be annulled and that u/s 54 of the said Act, it is only a transfer of property that can be annulled if the transferor is adjudged insolvent on a petition presented within three months after the date thereof.

In This case, the relinquishment deed, Ex.A-1 was executed on 7-10-1952 and I.P. 8/55 was presented only on 25-2-1955. It is submitted by the learned counsel that the application I.A. 873/56 is not maintainable as the petition to adjudicate the transferor as an insolvent was filed more than two years after the date of the transfer within the meaning of Section 53 of the Act and more than three months after the transfer within the meaning of Section 54 of the Act.

(16) The question, therefore, is what is the date of the transfer that is effected by Ex. A-1, from which the period of three months or the period of two years had to be computed u/s 53 and 54 of the Act respectively.

The learned Counsel for the appellants firstly relied upon Section 47 of the Indian Registration Act which provided that:

"A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made,

and not from the time of its registration".

Therefore in this case, it is contended, the transfer was effected on the date of Ex. A-1, i.e., 7-10-52. In the alternative it is submitted that the date of transferee shall be taken to be at least the date of the first presentation of the document for registration before the Sub-Register, which in this case is 2-1-53 and which date is clearly beyond two years from the date of the presentation of I.P. 8/55 which is 25-2-55.

In support of this contention, reliance is placed upon Section 75 cl. (3) of the Registration Act. Section 75 of the Act reads as follows:

"(1) If the Registrar finds that the document has been executed and that the said requirements have been complied with he shall order the document to be registered.

(2) If the document is duly presented for registration within thirty days after the making of such order, the registering officer shall obey the said order and thereupon shall, so far as may be practicable, follow the procedure prescribed in Section 58, 59 and 60.

(3) Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

(4) The Registrar may, for the purpose of any enquiry u/s 74, summon and enforce the attendance of witnesses and compel them to give evidence, as if he were a Civil Court, and he may also direct whom the whole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure, 1908"

Under clause (3) such registration effected under this section shall take the effect as if the document had been registered when it was first duly presented for registration. Therefore, it is argued that the transfer in this case has to be deemed to have been effected at least on 2-1-1953, when Ex. A-1 was first presented for registration. In this case, it is also stated that the registration was first refused and that there was a suit for compulsory registration u/s 75 of the Registration Act and that the suit was compromised and that under the compromise, the parties agreed that the documents shall be registered. In pursuance of that compromise decree, Ex. A-1 was again presented to the Sub-Register on 19-11-54.

Relying upon clause (2) of Section 75 which provided that the provisions contained in sub-section (2) and (3) of Section 75 shall *mutatis mutandis*, apply to all documents presented for registration in accordance with any such decree passed in a suit filed u/s 75 of the Act, it is contended that, in this case, the transfer must be deemed to have been effected at any rate on 2-1-53 when it was first presented for registration. Several decisions were cited before us to which we shall refer presently.

(17) We have held above that Ex. A-1 is avoidable u/s 53 of the Provincial Insolvency Act as the transfer was not made in good faith for valuable consideration. Therefore the question is whether I.P. 8/55 was presented within two years after the date for the transfer is taken to be as the A-1. If the date of transfer is taken to be as the date when it was actually registered i.e., 1-12-54, then the application to avoid Ex. A-1 was executed is clearly maintainable, but if the date of transfer is taken to be 7-1--52 when Ex. A-1 was executed or 2-1-53 when it was first presented for registration, then clearly the Official Receiver cannot maintain the application to avoid the transfer u/s 53 of the Provincial Insolvency Act.

The expression used in Section 53 is "any transfer of property". In this case the property that is transferred is Immovable property which is admittedly of the value of more than Rs. 100/- and u/s 17 of the Registration Act, the transfer of property under Ex. A-1 would take effect only when Ex. A-1 is actually registered. Till registration, it cannot be said that there is any transfer of property covered by Ex. A-1

In this connection, reference also has to be made to Section 9 cl. (1) (c) of the Provincial Insolvency Act. It is as follows:

"9. (1) A creditor shall not be entitled to present an insolvency petition against a debtor unless.

(a).....

(b).....

(c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition".

Under Section 6 Clause (c), it is provided that:

"6. A debtor commits an act of insolvency in each of the following cases, namely:

(a).....

(b).....

(c) if, in India, or elsewhere, he makes any transfer of his property, or of any part thereof which would under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent". It will be noticed that u/s 6 clause (c) read with Section 9, clause (c) and Section 53 and 54 of the Provincial Insolvency Act, the expression used is "transfer of property".

Under Section 9, the petition by a creditor to adjudicate a debtor as an insolvent shall be presented within three months of the act of insolvency on which the petition is grounded if the act of insolvency be a transfer within the meaning of Section 6, Clause (c) of the Act.

Similarly, u/s 54, the transfer which can be annulled must have been effected within three months prior to the presentation of the I.P. and u/s 53, the transfer, which can be avoided, shall have been made within two years prior to the presentation of the petition to adjudicate the debtor as an insolvent.

We have already pointed out that there can be no valid and effective transfer unless and until the document by which the property sought to be transferred is registered under the Registration Act if the property being immovable property and if its value is Rs. 100/- or more. The fiction of relation back which is provided for under Secs. 47 and 75 of the Registration Act does not find a place in the Provincial Insolvency Act. So that a creditor may present a petition to adjudicate a debtor as an insolvent u/s 9 of the Provincial Insolvency Act on the ground that the debtor made a fraudulent transfer of his property within the meaning of section 6(c) of the Act there must be a valid, effective and complete transfer. Similarly, so that an Official Receiver can present a petition for avoiding a transfer u/s 53 or for annulling transfer u/s 54 can be dismissed in limine on the ground that there was no effective and complete transfer. The real question is when does the transfer of property which is compulsorily registrable. u/s 49 of the Registration Act it is provided that no document required by section 17 or by any provision of the Transfer of Property Act, 1882 to be registered shall affect any immovable property comprised there in, unless it has been registered. This Section implies that such a document by reason of its execution alone or by reasons of its being presented for registration cannot have the effect of transferring the property. The argument based u/s 47 or Section 75, cl. (c) of the Registration Act has no bearing on the question that arises for decision in this case.

(18) in that present case, the question is not what was the effect of registration, but when did the even take place which effectively transferred the property. We are not concerned with the time form which the document is operative but with the time from which the document is operative but with the time at which the document became effective. We are clearly of the opinion that there was a transfer of property in this case under Ex. A-1 only on 1-12-1954 when it was registered and that it was within two years prior to 25-2-1955 the date of presentation of the petition for the adjudicating the debtor as an insolvent and that I.A. 873/56 filed by the Official Receiver to avoid the transfer effected under Ex. A-1 is maintainable.

(19) We shall next refer too the decisions cited before by the learned counsel for the a appellants and the respondents. In A.P.M. Syed Ibrahim Sahib and Brother Vs. V.S. Gurulinga Aiyar, , the same question arose with reference to sections 9, 53 and 54 of the Provincial Insolvency Act. In that case, the mortgage was executed by the debtor on 9-6-1922. The document was registered on 9-6-1922 and the I.P. was presented on 10-7-1922 when the Court reopened . It was argued that since the petition was presented on 10-7-1922 admittedly after the expiry of 3 months from the date of the transaction, 9-3-1922, the case did not

fall within section 54 of the Act.

But it was contended on behalf of the Official Receiver that the period of 3 months for presenting the petition should be calculated from the 9th June, 1922, the date when the document was registered, as it was only then that a complete transfer of property was made under the document. This contention was accepted by Madhavan Nair, J. as he then was. The learned Judge pointed out that until the date of the property and that if the time was to run from the date of execution of the document, the operation of Section 54 could easily be frustrated and that a dishonest insolvent has only therefore to date such fraudulent transfers with a date more than three months prior to the filing of the insolvency petition and that in such a case, the transfer cannot be annulled u/s 54 the period prescribed for presenting the document for registration being four months from the date of execution.

This decision was referred to and followed by a Division Bench consisting of Madhavan Nair and Baradswell JJ. of the Madras High Court in *M.G. Sundaragiriraja Ayyangar and Others Vs. D. Balasubramania Ayyar and Another*, (2). In that case, a question arose under Sec. 9(1)(C) of the Provincial Insolvency Act. Following the reasoning in the earlier decision, the learned Judges held the act of insolvency which consisted in the execution of a sale deed can be considered to have been committed only on the date when the sale deed was registered. Their Lordships pointed out that the question which arises u/s 9 Clause (1) (c) as well as u/s 54 of the Provincial Insolvency Act is the same.

We have also to refer to another decision of a Division Bench of the Madras High Court in *S. Kandaswami Chettiar as Trustee of Dharmaraja Koil Vs. R.A. Murugesu Chettiar and Another*, In that case also the question was what is the date of the transfer for the purpose of Section 54 of the Provincial Insolvency Act. The learned Judges Madhavan Nair and Stodart, JJ. who decided that case referred to the two earlier decisions with approval and held that the date of transfer within the meaning of section 54 is the date on which the document is registered.

(20) A Full Bench of the Lahore High Court also took the same view. In *Ram Saran Das Vs. Mallu and Others*, it was held by the Full Bench that the period of limitation prescribed by Sub-section (1) (c) of Section 9 of the Provincial Insolvency Act runs from the date of Registration of the deed and not from the date of the execution thereof. The decision of the Madras High Court in *M.G. Sundaragiriraja Ayyangar and Others Vs. D. Balasubramania Ayyar and Another*, was referred to and followed by the Full Bench. It was pointed out that title does not pass until the registration has been effected and that no transfer has taken place until the document is registered.

Similar view was taken by the High Court of Nagpur also in *G.W. Godbole V. Marotisa*, ILR (1937) Nag 403: (AIR 1937 Nag197). Pollock J, held in that decision that u/s 54 of the Provincial Insolvency Act, the period of limitation for

the annulment of a transfer made within three months of the date of the insolvency petition runs from the date of registration of the deed of transfer and not from that of its execution. The two decision of the High Court of Madras and the decision of the Full Bench of the Lahore High Court referred to above were followed by the learned Judge.

In the course of the judgment the learned Judge stated as follows:-

"Though it is no doubt dangerous to speculate on the intention of the legislature, it seems highly improbable that the legislature should ever have intended that limitation should run from the date of execution, of which the creditor had no notice and that the debtor and his transferee should be able to defraud creditors by delaying registration for three months. Such an unreasonable construction should not readily be placed on the section".

This decision was followed by Niyogi, J. in *Balkisan v. Bhanu Prasad* ILR 1939 Nag 377: (AIR 1938 Nag 454). The learned Judge held that the word "transfer" means a valid and effective transfer which could only take place after registration and not by mere execution of a document and that to put a construction such as is pressed by the learned counsel for the applicants, namely, that the word contemplates only the execution would obviously result in rendering section 54 of the Provincial Insolvency Act, negatory.

(21) In *District Board Bijnor v. Mohammad Abdul Salam*, ILR 1947 All 624: (AIR 1947 All 383) the question that arises for decision is one u/s 9, clause (1) (c) of the Act. It was held that the period of three months has to be calculated from the date of registration of the document which is alleged to be an act of insolvency and not from the date of its execution. The learned Judges pointed out that the document could not have any legal effect as a sale deed till it was registered and that the "transfer of property" therefore occurs only when-- and not till then--registration is effected and that the crucial event on which the transfer of property hinges is therefore the fact of registration.

(22) We may also mention that a Division Bench of the High Court of Calcutta in *Indo Burmah Trader's Bank, Ltd. Vs. Barada Charan Dhar, on Death, Sm. Sita Sati Dhar and Others*, also held the similar view, agreeing with the decisions of the Madras, Lahore and Nagpur High Court referred to above. Thus it is abundantly clear that there is a preponderance of authority clear that there is a preponderance of authority for the view that for the purpose of Section 9(1)(c), 53 and 54 of the Provincial Insolvency Act, the date of transfer of property is the date on which the document purporting to transfer property is registered and not the date on which it was executed.

No doubt, there is a decision of the Full Bench of the Rangoon High Court in *U On Maung v. Maug Shwe Hpaung*, AIR 1937 Rang 446 (FB) which took a contrary view over-ruling an earlier decision of a Division Bench of the same High Court in *U Ba Sein v. Maung San*, AIR 1934 Rang 216 but we prefer to follow the view taken by the High Court of Madras, Calcutta, Lahore and Nagpur to the view

taken by the Full Bench of the Rangoon High Court

(23) In the alternative, it is contended by Mr. Subrahmanyam learned Counsel for the appellant that under Sec. 75 Cl. (3) of the Registration Act read with Section 75 Cl. (2), the registration of Ex. A-1 shall take effect as if it had been registered when it was first duly presented for registration, i.e. on 2-1-53 and that it was admittedly more than two years prior to the date of the filing of the Insolvency Petition.

In support of this argument, the learned Counsel relied upon certain observations of the Madras High Court in Venkadari Somappa Vs. The Official Receiver of Bellary, already referred to above. It is necessary to refer to the facts of that case with reference to which the observation relied upon was made by the learned Judges in that case. A mortgage was executed on 5-3-33 by the debtor. It was presented for registration on 27-6-33 in the office of the Sub Registrar. The mortgagors denied registration and the Sub Registrar refused registration. On appeal to the District Registrar the latter directed the document to be registered and this was finally done on 11-12-33 under Sec. 75 of the registration Act. Mean while, on 28-8-33, the mortgagors presented their insolvency petition and they were adjudicated as insolvent on 11-1-34. The District Court held that the mortgage shall be deemed to have been effected between the date of the presentation of the insolvency petition and the adjudication and that therefore the mortgage was void in view of Clauses (2) and (7) of Section 28 of the Act.

It was in that context that the learned Judges pointed out with reference to Cl. (3) of Sec. 75 of the Registration Act that the date of registration was the date when the document was firsts presented for registration before the Sub Registrar i.e., 27-1-33 and that therefore the document is not void by reason of Clauses (2) and (7) of Section 28 of the Provincial Insolvency Act. That statement was not with reference to the date of transfer for the purpose of Sec. 53 or Section 54 of the Provincial Insolvency Act.

On the other hand, the learned Judges there referred to the earlier decisions in N.R.M.M. Muthiah Chettiar Vs. The Official Receiver of Tinnevely District and Another, and in M.G. Sundaragiriraja Ayyangar and Others Vs. D. Balasubramania Ayyar and Another, (2) and stated that for purpose of Section 54 the date when the document was actually registered is the date from which the three months had to be computed. We do not think that the observation in this decision does in any way support that contention of the learned Counsel for the appellant.

Reliance is also placed upon the decision of Bala Krishna Ayyar, J. in In Re: Subbaraya Setty and Others, . There a question arose u/s 54 of the Provincial Insolvency Act, and the transfers in question were two mortgage deeds, dated 5-8-47. They were presented for registration on 19-11-47. There were two mortgagors and with regard to one, it was registered on 8th December, 1947 and with regard to the other, it was compulsorily registered on 17th February, 1948.

The petition in insolvency was presented for the registration but less than three months from the date on which the documents were actually registered. So, the question arose whether the insolvency petition was filed within three month after the act of insolvency.

The learned Judge repelled the contention that the transfer should be deemed to have taken place on the date on which the mortgages were executed in view of Sec. 47 of the Registration Act. But the learned Judge observed that in order to find out when the transfer was made, we have to ascertain when the transfer became complete and that that date must be the date on which the document was actually registered. But, at the same time, the learned Judge held that the date when the document was actually registered is the date when it was first presented for registration. Clause (3) of Section 75 was relied upon. No doubt, this decision supports the contention of the learned counsel for the appellant. With great respect to the learned Judge, we are unable to agree with this view in view of the preponderance of authority to the contrary already referred to by us above.

In fact, in the later decision in Appana Veeraraghavamma Vs. Chandalada Padmaraju, Mack J. held that the date of transfer the date when the document purporting to transfer the Immovable property is actually registered and not the date of its execution or the date when the document was first presented for registration. The learned Judge was not prepared to agree with the view taken by Balakrishna Ayyar J.

(24) For all these reasons, we hold that in this case, the transfer evidenced by the relinquishment deed, Ex. A-1 was effected only on 1-12-54 when it was actually registered and that it could be avoided u/s 53 of the Provincial Insolvency Act as the Insolvency Petition was filed on 25-2-55 i.e., within two years from the date of the transfer sought to be avoided.

(25) It follows that these appeals fail and are dismissed with costs.

(26) Appeals dismissed.