
(1931) 04 MAD CK 0001
In the Madras High Court

N.C.T. Chidambaram Pillai

APPELLANT

Vs

S.V. Subramania Ayyar and Others

RESPONDENT

Date of Decision : 22-04-1931

Acts Referred:

Citation : AIR 1932 Mad 513 : 140 Ind. Cas. 674 : (1932) 36 LW 219

Hon'ble Judges : Pandalai, J

Bench : Division Bench

Judgement

Pandalai, J.—These petitions are by respondents 5 and 6 to a petition filed by the special receiver appointed in I.P. No.20 of 1925 in which

respondents 1 to 4 were adjudicated insolvents to avoid a transfer by the insolvents, Ex. 1, dated 19th July 1925 of a decree obtained by them to

respondent 5 and also a sub transfer by respondent 5 of the same decree by Ex. 2, dated 9th April 1926 to respondent 6 on the ground that Ex. 1

was a fraudulent transfer voidable against the receiver u/s 53 and that Ex. 2 was also a transfer without consideration and invalid against the

receiver. Certain dates are important. Ex. 1 is as already stated dated 19th July 1925. The insolvency petition was dated 13th August 1925 and

the adjudication followed on 9th February 1926.

2. The subtransfer by respondents 5 to 6 was on 9th April 1926 and the present petition to avoid the transfer and retransfer was filed on 3rd May

1926. The learned Subordinate Judge who heard the petition dismissed it holding that the transfer Ex. 1 was supported by consideration to the full

extent expressed upon it, viz., Rs. 3,000 that the consideration was adequate because the decree transferred although ex facie for an amount of

about Rs. 7,500 had been partially satisfied to the extent of Rs. 4,000; that there

were no circumstances showing want of bona fides and so far as

Ex. 2 the subtransfer was concerned, on the ground that it was not a transfer which could be annulled under the Provincial Insolvency Act. For this

opinion he relied upon the decision in Ponnammal Ammal Vs. District Official Receiver and Another, . He also held that the subtransfer was also

supported by consideration and good faith. The receiver appealed to the learned District Judge of Tinnevely. He reversed the Subordinate Judge's

decision holding that the Rs. 3,000 mentioned in Ex. 1 was not an adequate consideration even if it should be supposed that that sum was paid

which however he seems to have left without expressing a decided opinion thereon.

3. On the question of good faith the learned Judge came to the conclusion that the transfer Ex. 1 was not executed on the date it bears but must

have been antedated. For this he relied upon certain letters, Ex. C., series, produced by the receiver through the insolvents which the Subordinate

Judge had held to be not free from doubt. The Judge has not stated when in his view the transfer Ex. 1 was executed but says that it was

fraudulently brought into existence after the insolvency petition was filed to screen the insolvent's estate from its creditors. As to the subtransfer Ex.

2 he merely said that there was nothing to assign. On these findings he reversed the order of the lower Court and declared both Exs. 1 and 2

invalid.

4. In these petitions three objections are taken: (1) that the decision of the lower appellate Court proceeded on the view of the burden of proof in

such cases which was generally accepted at the time but which has since been declared to be erroneous by the Privy Council. It is urged that the

erroneous approach to the case has prejudiced the petitioners. The second ground is that the learned Judge has in his judgment not kept clear the

two grounds to be considered u/s 53, viz., consideration and good faith. It is said that he has discussed the adequacy of the consideration as if it

were by itself fatal to the transfer, that he has not in fact found whether the Rs. 3,000 was paid under Ex. 1 and that without coming to a decision

upon that point it was impossible to decide the case properly. Lastly it is urged that he has allowed his judgment very largely if not almost entirely

to depend upon an allegation of antedating as to Ex. 1 which was never made by

the receiver in his petition and to meet which the petitioners never had an opportunity. The third objection is that the learned Judge's view that the subtransfer Ex. 2 must fall along with Ex. 1 is erroneous and that according to the decisions upon the subject even though Ex. 1 may be avoided by the receiver u/s 53 of the Act, still if respondent 6 could show that he was a bona fide transferee for value without notice of the infirmities attaching to Ex. 1 he is entitled to succeed. On this point it is also urged that proceedings u/s 53 are not an appropriate method of attacking transfers by transferees from insolvents.

5. On the first question as to burden of proof it is undoubtedly the case that until the decision of the Privy Council reported in AIR 1931 75 (Privy

Council) following the case in Official Assignee of the Estate of Cheah Soo Tuan v. KhooSaw Cheon A.I.R.1930 P.C.265 the prevailing view of

the Indian Courts was that it lay upon the transferees to establish that they were bona fide transferees for value. This view has now been

authoritatively set aside and the correct view is that it is upon the receiver (petitioner) who wants to avoid the transfers u/s 53 to establish that the

transfers are invalid, for want of consideration and bona fides. Although neither of the decisions in this case in the Courts below refers to the

burden of proof, it is quite plain from the proceedings that they adopted what was at that time believed to be the correct view. The respondents to

the petition, i.e., the transferees were asked to begin. They led evidence. The receiver followed. The discussion in the two judgments is upon the

footing that the burden is upon the transferees to prove their case. The question is, whether, that being now shown to be wrong, it is a ground for

this Court to interfere. The learned advocate for the receiver says that where evidence on both sides has been given in a case and the Court has

considered that evidence, the question of burden of proof is only one of academic interest and that the decision of the lower Court cannot be

disturbed on the ground of its having followed a wrong rule as to burden of proof. The decisions of the Privy Council which are well known, viz.,

Sethuratnam Aiyar v. Venkatachela Goundan A.I.R.1920 P.C.67 , Sivaprakasa Pandara Sannadhi v. Veerama Reddi A.I.R.1922 P.C.292 and

AIR 1927 238 (Privy Council) have been cited. But on this very question in connexion with a case exactly similar to the present, the Privy Council

have said in *The Official Assignee of the Estate of Cheah Soo Tuan v. Khoo Saw* A.I.R.1930 P.C.265;

The fact that the wrong party was called upon to begin, taken alone, might not be sufficient ground for a new trial. Here however there was more.

The trial Judge had taken an erroneous view as to the law in regard to onus. His mind was coloured by that view, and he was thereby disabled

from weighing evenly the evidence. Thus the respondent was placed at a disadvantage as the direct result of the trial Judge's error.

6. The whole of this passage applies exactly to the decision of the lower appellate Court in this case; and also to that of the first Court with this

difference that that Judge came to a conclusion in favour of the present petitioners and therefore they had no grievance about it. In the Privy

Council case from which I have just quoted the Judge in the first Court had said that he considered the transaction tainted with fraud intrinsically

apart from the question of the onus of proof. The Judge in the first appellate Court considered that a mere casual expression of that kind with

nothing to support it could not cure so serious a defect as there was in that trial, and set aside the decision of the first Court. The Privy Council

upheld that view. It seems to me that the judgment of the lower appellate Court having proceeded upon the view that unless the petitioners proved

what it was not their duty to prove according to the latest decisions, they should lose, the judgment must be held to be coloured by that view and

the learned Judge must be held thereby to be disabled from weighing evenly the evidence. I think that the decision of the District Judge must be set

aside on that ground alone.

7. As to the second objection that the learned Judge's discussion as to consideration and bona fides was not clear in itself and was further mixed

up with matter which the petitioners had no opportunity to meet, I do not propose to go more into it in view of the fact that the whole case will

have to be judged upon a new orientation, i.e., from the point of view whether the receiver has proved what he ought to prove. I will only add that

the allegation that the transfer Ex. 1 was antedated, was not made in the petition filed by the receiver, and that therefore the evidence of the

respondents (present petitioners) contains practically no reference to it or attempt to meet it. If that circumstance is considered to be material, the

present petitioners must have an opportunity of meeting it.

8. The third and last objection arises in this way. The receiver contends that on the facts of this case, as soon as the transfer Ex. 1 is avoided u/s

53, the receiver's title to the property relates back to the date of the petition, viz., 13th August 1925, and that therefore any subsequent transfer by

respondent 5, such as Ex. 2 dated 9th April. 1926 which is subsequent to the date of adjudication automatically falls to the ground without more.

For this, reliance is placed upon the decision of the English Court of Appeal in *Gunsbourg*, In re [1920]2 K.B.426 which has followed

Dombrowski, In re [1923]92 L.J. Ch.415, and on the decision of the Calcutta High Court in *Lukhipriya v. Rao Kissori* [1916] 34 I.C.435. On

the other hand respondent 6 contends that the case is governed by the decision in *Ponnammai Ammal Vs. District Official Receiver and Another*,

and the English decision in *Hart*, In re, *Green Ex parte* [1912]3 K. B.6. The question raised by these respective contentions would only arise for

decision when it is found as a fact that respondent 6 is a bona fide transferee for value without notice from respondent 5. The learned District

Judge has not dealt with the question. If it is found that respondent 6 was not a bona fide transferee, the question may never arise for decision at all

and I therefore refrain from expressing an opinion upon it.

9. The further point arising upon this contention is that it is incompetent for the Court in proceedings u/s 53 to inquire into the validity of transfer by

transferees from insolvents. In one sense that is so; in the sense that the section itself deals with only dealings by insolvents. Indeed Sections 53, 54

and 55 alike deal with only dealings by insolvents. But that does not dispose of the question whether in proceedings properly framed under those

sections it may not be convenient and sometimes necessary to have the parties before the Court whose interests will necessarily be affected by the

decision. For that the answer is to be sought, not in the Insolvency Act, but in the general rules of procedure. If authority were wanted there is a

decision of this Court in "*agannatha Ayyangar v. Narayana Ayyangar* [1919] 52 I.C. 761 where one learned Judge approved of the procedure

adopted in this case. It would indeed be extremely inconvenient and expensive if when transfers are sought to be avoided Under Sections 53 to

55, transferees from those transferees even though the subtransfers were

subsequent to the petition or as in this case the order of adjudication could maintain that they should not be impleaded and that the receiver should proceed against them by a separate suit. Such a rule would make proceedings in insolvency practically interminable and still more ineffective than they already are. The power of the Court u/s 4 to decide all questions arising in insolvency is undoubted and it is only a matter of discretion whether the procedure under the Act should be adopted or a suit be directed. I have myself no hesitation in thinking that in the present case it would be far more conducive to justice to have the matter of respondent 6's subtransfer dealt with by the Court of insolvency. Without therefore deciding whether respondent 6 would, even if he established his plea of a bona fide purchaser for value without notice, be able to maintain his purchase against the receiver, the contention that the proceedings against him were incompetent must be rejected.

10. The result is that the decision of the learned District Judge must be reversed and the appeal remitted to him for fresh disposal in the light of the above remarks. Both parties will have liberty to adduce fresh evidence. The costs of these petitions will abide and be provided for in the revised order to be made.