(1932) 09 MAD CK 0007

In the Madras High Court

N.R.M.M.M. Muthiah Chettiar APPELLANT

Vs

The Official Receiver of Tinnevelly District and Another RESPONDENT

Date of Decision : 28-09-1932

Acts Referred:
Provincial Insolvency Act, 1920 — Section 53, 54

Citation : AIR 1933 Mad 185 : (1933) 37 LW 130 : (1933) 64 MLJ 382

Hon'ble Judges : Madhavan Nair, J

Bench : Division Bench

Judgement

Madhavan Nair, J.—The 2nd respondent in O.P. No. 29 of 1925 is the appellant. This Civil Miscellaneous Second Appeal arises out of an

application filed by the Official Receiver for a declaration that a mortgage deed, dated 9th March, 1922, executed by the 1st respondent, the

insolvent, in I. P. No. 26 of 1922, in favour of the appellant, one of his creditors, is void as against him both under Sections 53 and 54 of the

Provincial Insolvency Act. The application was dismissed by the learned Subordinate Judge of Tuticorin. His decision was set aside in appeal by

the learned District Judge of Tinnevelly. He held that the transaction in question is bad under both Sections 53 and 54 of the Act. The present

second appeal is against that decision of the learned District Judge.

2. A preliminary objection is taken by the respondent, the Official Receiver, that no second appeal lies in this case. This objection is accepted by

the learned Counsel for the appellant; but he argues that the decision of the case involves a decision on a question of jurisdiction and that therefore

the case should be dealt with u/s 115, Civil Procedure Code. His argument is twofold: (1) the alienation in question being in favour of a creditor, the petition to annul it does not fall u/s 53 of the Provincial Insolvency Act but falls only u/s 54; and (2) when treated as a petition under the latter

section it will be found that the Court has no jurisdiction to annul it inasmuch as the alienation complained of was made more than three months

before the date of presentation of the insolvency petition; or, in other words, that the petition for insolvency was presented after the expiry of three

months after the date of the transaction. In support of his first argument the only decision relied on by Mr. Krishnaswami Aiyar is Appathorai

Odayar v. The Official Receiver, Tanjore (1926) 99 I.C. 683, but that decision does not support him; in fact the question now raised was not

raised in that case at all. Two other decisions were also referred to by him, Mandavilli Ramanna v. Official Receiver, Godavari (1926) 101 I.C.

153 and Jawanmull v. Sripathi Rao (1926) 101 I.C. 568 but these have hardly any bearing on the question.

3. But I shall assume for the purpose of this case that the above argument is good and deal with the next argument, namely, whether the Court has

jurisdiction to annul the alienation u/s 54. Section 54 runs as follows:

(1) 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.

4. One of the conditions required to bring a case within the operation of the section is that the transfer complained of should have been made within

three months before the date of the presentation of the insolvency petition. Mr. Krishnaswami Aiyar contends that in this case the insolvency

petition was presented after the expiry of three months from the date of the mortgage, Ex. I, and therefore the Court had no jurisdiction to deal

with the application under the section. To appreciate the ""arguments on this point it is necessary to state the following facts. The mortgage was

executed on 9th March, 1922. The Court closed for the summer recess on or about 9th May, 1922. The document was registered on 9th June,.

1922. The Court opened after the summer recess on 10th July, 1922. The petition was presented on 10th July, 1922.

5. It is argued that since the petition was presented on 10th July, 1922, admittedly after the expiry of three months from the date of the transaction,

9th March, 1922, the case does not fall within Section 54 of the Act. To this argument the learned Counsel for the respondent offers three

answers: (1) that the period of three months for presenting the petition should be calculated from 9th June, 1922, the date when the document was

registered as it was only their that a complete transfer of property was made under the document; (2) that even if the date is to be calculated from

9th March, 1922, since the Court was closed at the time when three months expired from that date, the Official Receiver is entitled to file the

petition on the re-opening of the Court; (3) the third answer has reference to Section 9(c) of the Provincial Insolvency Act. In this case this

alienation, that is the mortgage transaction in question, was itself the act of insolvency on which the insolvency petition was admitted. The Court

acting on that petition has adjudicated the 1st respondent an insolvent. u/s 9 of the Act the insolvency petition if by a creditor-and the petition in this

case is by a creditor-must be filed within three months of the act of insolvency-. One of the conditions required for the avoidance of transfers u/s

54 is that such person (the transferor) should be ""adjudged insolvent on a petition presented within three months after the date thereof"" (that is, the

date of the transfer). Having regard to the language used in Section 9 and in Section 54 it is argued that if the insolvency petition in this case has

been filed properly within three months after the date of the transfer which is the act of insolvency, then for the purposes of Section 54 it may well

be held that the transferor, that is the insolvent, is adjudged insolvent on a petition presented within three months after the date of the transfer; or in

other words that the petition of insolvency was presented within three months after the transfer and that therefore the condition u/s 54 which is in

question has been strictly complied with. All these three alternative arguments of the respondent deserve serious consideration, but I propose to

deal only with the first point raised by him, that is, should the period of three months be calculated from the date of the execution of the document

or from the date of its registration? If the period may be calculated from the date of registration, then in this case the document having been registered on 9th June, 1922 and the petition of insolvency having been presented on 10th July, 1922, the petition was clearly presented within three months after the date of the transfer, and the requirement referred to in Section 54 of the Act has been complied with.

6. The alienation in this case is a mortgage. The consideration for it is more than Rs. 100. That being so, the mere execution of the document does not make it a valid transfer of property. u/s 59 of the Transfer of Property Act, ""Where the principal money secured is Rs. 100 or upwards a mortgage can be effected only by a registered instrument signed by the mortgagor and attested at least by two witnesses."" Registration of the document is therefore essential to make it a valid transfer, and when registered ""the document shall operate from the time it would have commenced to operate if no registration thereof had been required or made . . .,"" that is, in this case from the date when the document was executed, namely, 9th March, 1922.. In a case like the present, up to the date of registration there can be no valid transfer or mortgage of land within the meaning of Section 59 of the Transfer of Property Act. If the time was to run from the date of execution of the document the object of Section 54 could easily be frustrated. A mortgage or sale of immovable property may be registered up to four months after its execution. As pointed out by the learned Judge, a dishonest insolvent has only therefore to date such fraudulent transfers with a date more than three months prior to the filing of the petition and then they cannot be avoided u/s 54.

7. For the above reasons I would hold that even if the petition for the annulment is to be treated solely as one falling u/s 54, the Court had jurisdiction to deal with it as the, conditions required under that section have been fully complied with. In this view the other points raised by the respondent need not be discussed.

8. If the petition can be dealt with u/s 53 of the Act also, as it has been dealt with by the Lower Courts and as I think it can well be, then having regard to the findings it is clear that no question of jurisdiction arises. It therefore follows that in any event this Civil Miscellaneous Second Appeal should be dismissed. The 1st respondent will get his costs from the appellant.

9. C.M.P. No. 4485 of 1928.-No order is necessary.

