
(1940) 11 MAD CK 0037
In the Madras High Court

R.M.P.R.M.M. Subramanian Chettiar by his Power-of-Attorney
agent M.S. Ramanathan Chettiar

APPELLANT

Vs

The Official Receiver

RESPONDENT

Date of Decision : 27-11-1940

Acts Referred:

Provincial Insolvency Act, 1920 — Section 53

Citation : (1941) 54 LW 173 : (1941) 2 MLJ 212

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—This application arises out of insolvency proceedings in the Court of the Subordinate Judge of Tanjore. On the 27th October, 1931 V. Ry. Badranandaji alias Vasudeva Sahib, was adjudicated an insolvent on his own petition, which had been filed on the 11th March, 1930. The insolvent is a son of an illegitimate son of the late Rajah of Tanjore, and as the result of the suit which came up on appeal to this Court in Maharaja of Kolhapur v. Sundaram Ayyar I.L.R.(1924) Mad. 1, and eventually went to the Privy Council, he became entitled to a considerable share in what is known as the Tanjore Palace Estate. So far as the insolvent is concerned, his share was finally decided by the judgment of this Court, which was delivered on the 21st January, 1924. According to the District Judge of West Tanjore whose order is the subject matter of this application for revision, the insolvent is a man of depraved tastes and has merely led a life of pleasure. It has been established in the present proceedings that in 1928, he was living with a mistress named Ammanna. Ammanna had a daughter, who was the mistress of the petitioner, a Nattukottai Chettiar. On the 12th March, 1928 the insolvent conveyed the whole of his interest in the Palace Estate to the petitioner. By the same deed he purported to convey to the petitioner the interest of his son, who is a minor. This transfer took place within two years of the petition for adjudication. The first respondent, who is the Official Receiver, applied to the Subordinate Judge of Tanjore for an order setting aside the transaction under the provisions of Section 53 of the Provincial

Insolvency Act. The application was allowed and on appeal to the District Judge the Subordinate Judge's decision was confirmed. It has been found that the transfer of the insolvent's interest in the Palace estate to the petitioner was the result of a conspiracy between the insolvent, his mistress and the petitioner to defeat the "insolvent's son for the benefit of the insolvent's mistress, and the petition falls to be dealt with on that basis. The Subordinate Judge set aside the transaction of the 12th March, 1928 in its entirety and his order was in no way limited by the District Judge. The petitioner has asked this Court to set aside the District Judge's order under the revisional powers conferred upon the Court by Section 75 of the Provincial Insolvency Act.

2. The petitioner has raised three contentions. In the first place he says that, although the transaction was mala fide so far as the son was concerned, that does not make it void as against the creditors and that the parties had no intention of defeating the creditors. In these circumstances it is said that an application will not lie u/s 53 of the Provincial Insolvency Act. In the second place the petitioner says that assuming the transaction falls within Section 53 it can only be set aside when the annulment will bring relief to the creditors. The third contention is that the Court has no power to set aside the transaction so far as it concerns the minor's share in the property.

3. The first contention is really answered by the reading Section 53. That section says that any transfer of property, not being a transfer made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, shall, if the transferor is adjudged insolvent on a petition presented within two years after the date of the transfer, be voidable as against the Receiver and may be annulled by the Court. Therefore, there must be both good faith, and valuable consideration. If there is want of good faith the fact that valuable consideration has passed will not save the transaction. The lack of good faith has been proved and this was sufficient to enable the Court to pass the order annulling the transaction. It may be mentioned, however, that only part of the consideration passed. The fact that the insolvent and his fellow conspirators may not have had in mind that the transaction would operate to defeat his creditors and acted merely with the object of putting the property beyond the reach of the son for the benefit of his father's mistress does not make the transaction any the less a fraud on the creditors. The insolvent admittedly owed large sums of money and was unable to pay his debts. In transferring the property he was defeating his creditors. But what the Court has to consider is whether the transaction comes within the four corners of Section 53, and if it does the Court has the power to set it aside.

4. There is no substance in the second contention and it was not pressed below. The transaction is clearly one which can be set aside u/s 53 and in setting it aside the Court is giving relief to the insolvent's creditors. The Court is placing the property at the disposal of the Official Receiver for the benefit of the creditors.

5. We are not prepared to allow the petitioner to raise the third contention. It was mentioned in the petitioner's affidavit in the trial Court and in the memorandum of appeal to the District Court, but it is obvious that it was dropped in the Courts below because their judgments are silent on the question. The minor has not been a party to this petition and as the point was not taken below we cannot allow the petitioner to ask that the position should be altered to the minor's disadvantage in his absence. In a proper case the Court may allow a point of law not taken below to be raised u/s 75 of the Provincial Insolvency Act, but this is not a case in which we consider the discretion should be exercised in favour of the petitioner. He has been a party to a conspiracy to defraud the insolvent's son and as he did not press this point either before the Subordinate Judge or the District Judge he will not be allowed to take it here in an application for revision.

6. The result is that the petition fails and will be dismissed with costs in favour of the Official Receiver.