

(1973) 07 MAD CK 0020

In the Madras High Court

Case No : Letter Patent Appeal No. 2 of 1968

Sabarianandam Nadar Martarulappan Nadar

APPELLANT

Vs

Chellachami Nadachi and Another

RESPONDENT

Date of Decision : 09-07-1973

Acts Referred:

Provincial Insolvency Act, 1920 — Section 56

Citation : AIR 1974 Mad 229 : (1973) ILR (Mad) 557 : (1978) 87 LW 76 :
(1974) 87 LW 76

Hon'ble Judges : N.S. Ramaswami, J;Kailasam, J

Bench : Division Bench

Judgement

N.S. Ramaswami, J.—This Letters Patent appeal is against the judgment of Alagiriswami, J., allowing S. A. No. 356 of 1963. The suit out

of which this appeal had arisen, is one for declaration of title and for redemption. The suit property originally belonged to a tarwad by name

Thelukkada Parakkavilakathu Veetu tarwad. The Karnavan of that tarwad had created two othis on one and the same date, namely, 9-8-1099 M.

E. corresponding to 1924, under Exs. A-1 and A-2 respectively over portions of the suit property in favour of two third parties by name

Mathavan Pillai and Umayamma.

2. Kumara Pillai was a junior member of the said tarwad. There was a partition of the tarwad properties under Ex. A-3, dated 21-3-1104 M. E.

(1928) and the suit property fell to the share of the above Kumara Pillai. The present plaintiff's father was one of the creditors of the said Kumara

Pillai and he filed a suit in O. S. 1721 of 1103 for recovery of money and the suit property was attached. Ex. A. 4 shows that the said attachment

was on 2-4-1104 M. E. A few days after this attachment, the said Kumara Pillai

presented an insolvency petition and ultimately he was adjudged insolvent. The presentation of the petition was on 8-4-1104(ME) as seen from Ex. B-6 and the adjudication was on 14-11-1104(ME) as seed from Exhibit B-7. Later, the Official Receiver made a report to the insolvency court that there were no assets of the insolvent to be administered, that on further proceedings need to taken, and that the proceedings might be closed. The insolvency court recorded this report, after which for all practical purposes the insolvency proceedings had been terminated.

3. In pursuance of the decree obtained in O. S. 1721 of 1103, the equity of redemption, which had been attached earlier, was brought to sale and the plaintiff's father who was the decree-holder himself, purchased the same on 8-8-1117(ME)(1942), as evidence by Ex. A-5. Symbolical delivery of the equity of redemption was effected in favour of the plaintiff's father on 17-11-1119(1944), as evidenced by Ex. A-6. The plaintiff who succeeded to the interest of his father, is now claiming redemption of the two othis under Exs. A-1 and A-2.

4. The defendant has been impleaded as the party who is in possession of the property as othidar. Though the two othis were in favour of the Mathavan Pillai and Umayamma, as stated earlier, the defendant has taken the documents, namely Exs. B-3 and B-4, both dated 30-1-1119(1943), from the above othidars under which the rights of the othidars have passed to the defendant.

5. The defence to the suit raised by the defendant is two-fold. The first is that he is not merely in the shoes of the original othidars, but he has acquired the equity of redemption itself through a sale transaction which occurred even prior to the attachment of the said right in the money suit brought by the plaintiff's father. Kumara Pillai, the junior member of the tarwad, purported to sell the suit property to his own wife by name Kartyayani Under Ex. B1 dated 12-2-1103(1928). This is even prior to the partition of the tarwad properties under Ex. A.3. As already seen, after the above said partition, the plaintiff's father attached the equity of redemption, as evidenced by Ex. A. 4 dated 2-4-1104(M. E). The sale in favour of Kartyayani by Kumara Pillai was prior to the above said attachment. After Kartyayani's death, her daughter has executed a sale of the property under Ex. B 2 dated 29-9-1118(1943) in favour of the defendant. It is

by virtue of this document the defendant claims title to the equity of redemption and it is after the above sale he got the rights of the Othidars transferred to him under Exs. B-3 and B.4. Thus, according to the defendant, the rights of the mortgagor and that of the mortgagee have merged and he has become the full owner of the property. He contends, therefore, that the plaintiff has no right of redemption, as claimed in the suit.

6. The second line of defence is that the court sale in favour of the plaintiff's father was during pendency of the insolvency proceedings, and, therefore, the Court sale is not valid. The contention of the defendant is that, under Ex. A-5, on title passed to the plaintiff's father in respect of the equity of redemption and, therefore, the plaintiff has no case.

7. Regarding the question as to whether the defendant acquired title to the equity of redemption by virtue of Exs. B1 and B.2, the finding is that Ex.

B-1 is not supported by consideration and the said document had been created by Kumara Pillai only to screen the property from his creditors,

and the effect of the finding is that there was no intention to pass title to Kartyayani under that document. There is also the further finding that,

Kumara Pillai being a junior member of the tarwad, he had no alienable interest in any portion of the tarwad properties prior to the partition and,

on that score also, under Ex. B 1, Kartyayani did not get any title. Regarding the other question, it has been found that the insolvency proceedings

had been abandoned even prior to the court sale in favour of the plaintiff's father and, therefore, the various provisions of the Provincial Insolvency

Act would not bar the plaintiff's father from getting title in the court sale.

8. Mr. Padmanabhan, the learned counsel for the defendant-appellant, contends before us that the finding of the learned "Judge who heard the

second appeal regarding the right of Kumara Pillai as a junior member of the tarwad in conveying title in the property to his wife Kartyayani under

Ex B 1 requires reconsideration. His main contention is that, even though a junior member is not entitled to alienate any portion of tarwad property,

such alienation can be questioned only by the other members of the tarwad and the same cannot be challenged by third parties like the plaintiff.

However, we are of the opinion that we need not go into this question at all. For we are satisfied that, even otherwise, Kumara Pillai did not get

any title to the property. Besides the question whether Kumara Pillai as a junior

member of the tarwad can convey good title to his wife

Kartyayani, there is the further question whether Kumara Pillai ever intended to convey title in the property under Ex. B1 to his wife Kartyayani.

The finding of the courts below, confirmed by Alagiriswami J., who heard the second appeal, is that Ex. B1 the sale by the Kumara Pillai in favour

of his wife Kartyayani is not supported by consideration, that it had been executed by him only to screen the property from his creditors, and that,

therefore, the document is invalid. As we understand the finding, the view of the courts below as well as that of Alagiriswami J. is that Kumara

Pillai never intended to convey title in the property of his wife. We do not find any material to differ from the above view, considering the

circumstances of the case. Therefore the defendant (Appellant before us) cannot succeed in defeating the plaintiff in his claim for redemption on the

ground that his (defendant's) predecessor-in-title had purchased the equity of redemption even prior to the attachment of the same in the money

suit.

9. The only remaining question, therefore, is what is the effect of the insolvency proceedings on the court sale in favour of the plaintiff's father. As

already noted, the sale was in the year 1942(1117 ME). The insolvency proceedings had been started in the year 1928 in the adjudication was in

the year 1929. In 1930(1106 ME) the Official Receiver made a report to the Insolvency Court stating that the insolvent was not possessed of any

assets and, therefore, no further proceedings need to taken. This report was recorded by the Insolvency Court. What is the effect of this report

and the recording of the same by the insolvency, is the question.

10. Alagiriswami, J., who heard the second appeal, after referring to Mutha Sarvarayudu and Others Vs. Vammi Kondalarayudu and Others, , has

observed that, if the Official Receiver closes or abandons administration and no creditor opposes such a course, the vesting order must be deemed

to have worked itself out and the residue of the estate would revert to the insolvent even without a specific order revesting it. Mr. Padmanabhan,

the learned Counsel for the defendant-appellant, refers to two decisions in East India Industries (Madras) Private Limited Vs. Regional Provident

Fund Commissioner, , and C.P. Janammal Vs. C.M. Ranganathan, and contends that the mere fact that the Official Receiver has reported that

there were no assets and no further proceedings need be taken, does not mean that there was annulment of the adjudication, and that there is no

provision in the Provincial Insolvency Act, under which it can be said that the property which originally vested in the Official Receiver would revert

to the insolvent on the Official Receiver merely making a report as mentioned above. But the two decisions relied on by the learned Counsel are

distinguishable on facts. Those are cases where there was only inaction on the part of the Official Receiver. But here is a case where the Official

Receiver makes a report that on further proceedings need be taken and the Insolvency Court puts its seal to such a report by recording the same.

It is clear that this is not a case where there is only inaction on the part of the Official Receiver. In *Bonthala Subbamma Vs. Gadamsetti Surappa*

Company, by surviving partner Gadamsetti Subbiah and Another, , the Official Receiver had reported that final dividends had been declared. But

there was neither unconditional discharge of the insolvent nor was the debt fully satisfied. There was no order of annulment or re-vesting of the

property in the insolvent. Even so, it was held that the insolvency proceedings should be deemed to have come to a close and, in spite of the fact

that there was no formal order of re-vesting of the property in the insolvent, the insolvent could convey good title. We are of the opinion, that this

case would squarely apply to the facts of the present case. No doubt in that case, final dividends had been declared which is absent in the present

case. But, as we noted earlier, in this case the Official Receiver reported that there were no assets at all belonging to the insolvent and that,

therefore, no further proceedings need be taken. The fact that no dividends had been declared in this case, does not make any difference regarding

the point under consideration. In both the cases, the Court has approved the report of the Official Receiver which was to the effect that the

insolvency proceedings may be closed. It is significant to note that, even in the above reported case, there was no discharge of the insolvent.

11. It is not in dispute that, after 1930 when the Official Receiver made the report as in Ex. A. 12, no one thought of taking any step or proceeding

in the Insolvency Court. The circumstances do indicate that the insolvency proceedings had been abandoned, because all the parties proceeded on

the footing that there was no property available for being distributed among the creditors. Under such circumstances, the principle laid down in

Bonthala Subbamma Vs. Gadamsetti Surappa Company, by surviving partner Gadamsetti Subbiah and Another, , would squarely apply to the

facts of the present case.

12. There is also the further question as to whether it is open to the defendant to challenge the court sale under Ex. A. 5. Assuming that the

insolvency proceedings had not been abandoned, that adjudication continued and that thereby the property continued to vest in the Official

Receiver, the question is who can challenge the court sale. In the Fruit and Vegetable Merchants Union Vs. Delhi Improvement Trust, , the scope

of vesting of property in the Official Receiver is pointed out in the following words--

That the word "vest" is a word of variable import is shown by provisions of Indian statutes also. For examples, Section 56 of the Provincial

Insolvency Act (5 of 1920) empowers the court at the time of the making the order of adjudication or thereafter to appoint a receiver for the

property of the insolvent and further provides that "such property shall thereupon vest in such receiver." The property vests in the receiver for the

purpose of administering the estate of the insolvent for the payment of his debts after realising his assets. The property of the insolvent vests in the

receiver not for all purposes but only for the purpose of the Insolvency Act and the receiver has no interest of his own in the property.

In Subbaiah Goundan Vs. Ramasami Goundan and Others, , it is observed--

Insolvency does not operate as civil death. The insolvent's property vests in the Official Receiver for the purpose of administering the estate and

for meeting the claim of the creditors. The Act does not affect the capacity of the insolvent to enter into contracts and otherwise deal with the

property. He is in the position of a person who has alienated all his property or otherwise lost it. But his position cannot be equated to that of a

minor or a lunatic. He can be sued with or without the leave of the court, as the case may be and in that suit he can properly represent himself. But

any decree that might be obtained by him would not bind the Official Receiver in whom his entire properties vest. If the properties vested in the

Official Receiver are sold as if they were the properties of the insolvent, the sale would be valid and the judgment debtor cannot question the

validity of the sale. Such a sale would be analogous to a sale of the property of

the third party as if it was the property of the judgment debtor. The sale cannot be held to be a nullity or one made without jurisdiction.

In the present case, the defendant who represents the judgment debtor is the person who challenges the court sale on the ground that, on the date of the court sale, the property had vested in the Official Receiver.

13. We are quite clear that it is not open to the defendant to so challenge the court sale. It is for the Official Receiver to challenge the same. The plaintiff as representing the court auction purchaser is entitled to have redemption of the othies. The conclusion of Alagiriswami J. on this point is correct.

14. The Letters Patent Appeal fails and is dismissed with costs.

15. Appeal dismissed.