
(1966) 05 P&H CK 0048

In the Punjab And Haryana At Chandigarh

Case No : Second Appeal from Order No. 32 of 1963

Shrimati Dial Kauk

APPELLANT

Vs

The Official Receiver, Ambala, and Others

RESPONDENT

Date of Decision : 26-05-1966

Acts Referred:

Provincial Insolvency Act, 1920 — Section 53

Citation : (1966) 05 P&H CK 0048

Hon'ble Judges : P.D. Sharma, J

Bench : Single Bench

Advocate : K.S. Thappar, for the Appellant; Roop Chand and Shri Puran Chand, for the Respondent

Final Decision : Allowed

Judgement

P.D. Sharma, J.—Bakhshish Singh and Mehar Singh sons of Shadi, Jat of village Mataur, district Ambala were declared insolvent under the provisions of the Provincial Insolvency Act, 1920, (hereinafter referred to as the Act) by the Insolvency Judge, Ambala, on 15th October, 1959. The Official Receiver moved the Insolvency Court on 29th January, 1960, u/s 53 of the Act for setting aside of the five separate alienations made by the two involvents which briefly may be stated as follows: Bakhshish Singh sold about 15 kanals of his land for Rs. 8,000/- by a registered sale deed dated 23rd April, 1959, (R. 6) in favour of Baldev Singh and four other respondents Nos. 5 to 9. Similarly Mehar Singh sold about 77 kanals of land for Rs. 15,000/- in favour of same respondents by registered sale deed dated 23rd April, 1959, (R. 11) Mehar Singh again sold about 10 kanals of his land for Rs. 2,000/- by a registered sale deed dated the 24th April, 1959, (R. 7) in favour of Smt. Dial Kaur. Bakhshish Singh sold some of his land for Rs. 6,000/- on 24th April, 1959, (R. 9) in favour of respondent Nos. 3 and 4 Ram Singh and Baljit Singh minor sons of his brother Mehar Singh and Mehar Singh made a gift of some of his property by registered document in favour of his wife Smt. Joginder Kaur on 24th April, 1959, (R. 10). The alienees,

respondents 5 to 10 before the Insolvency Judge registered the Official Receiver's prayer and added that the sales of the land in their favour were made in good faith and for consideration and that the debt payable by the alienors Bakhshish Singh and Mehar Singh was very small as compared to the value of the property possessed by them. Smt. Joginder Kaur maintained that no fraudulent act has been committed by the donor.

2. The Insolvency Court after framing the necessary issues and recording the evidence came to the conclusion that the aforesaid five alienations made by the two insolvents were not made in good faith and for valuable consideration and proceeded to annul them. It also directed that the property covered by these alienations should vest in the Official Receiver who should take further proceedings in accordance with law to clear the debts by disposing of the property. The alienors respondents were also made to pay the costs of the proceedings.

3. The learned Additional District Judge Ambala, by his order dated the 7th June, 1963, on appeal, upheld the decision of the Insolvency Court. Smt. Dial Kaur was aggrieved from the above order and preferred Second Appeal No. 32 of 1963 in this Court. Baldev Singh and four other sons of Nand Singh also in their Second Appeal No. 33 of 1963 assailed the aforesaid order of the learned Additional District Judge. This judgment will dispose of both these appeals.

4. The learned counsel for the Official Receiver-respondent in this Court raised a preliminary objection that no second appeal was competent against the order of the learned Additional District Judge in the present case. He relied on AIR 1935 708 (Lahore) , in support of his contention. The learned counsel for the two sets of appellants conceded that no appeal in fact was competent against the impugned order of the appellate Court but he prayed that these two appeals might be treated as revisions u/s 75 of the Act to which the counsel for the opposite side has no objection. These two appeals will be treated as revision petitions and disposed of as such. It may be stated here that Ram Singh and Baljit Singh in whose favour certain property was sold by Mehar Singh for Rs. 6,000/- have not questioned the legality or propriety of the order of the two Courts below. Similarly Smt. Joginder Kaur, wife of Mehar Singh also accepted the decision of the learned Additional District Judge. It is common ground that the Official Receiver has sold a part of the property which formerly stood transferred in favour of Ram Singh and Baljit Singh for a sum of Rs. 8,100/- and that the debt due from the two insolvents was in the neighbourhood of Rs. 2,100/- while the appellants in their written statement before the Insolvency Court had admitted that the debt due from the two insolvents was about Rs. 3,000/-.

5. The learned Additional District Judge while dealing with the sale deed dated 23rd April, 1959, Exhibit R. 11 held that consideration had been proved to the tune of Rs. 600/- only. As regards the sale in favour of Smt. Dial Kaur it was observed that consideration had been proved to the tune of Rs. 1,000/- only and

no more. In the case of third sale for Rs. 8,000/- consideration to the extent of Rs. 3,900/- only was accepted as established on the record. These findings of fact by the Court below indeed cannot be disturbed at this stage.

6. The learned counsel for the alienee petitioners maintained that the two Courts below in spite of the above findings could not have annulled the three sales in toto but to the extent it was necessary to do so to pay off the creditors of the two insolvents. In this connection he relied on The Official Receiver of Coimbatore Vs. Palaniswami Chetti alias Ponnuswami Chettiar and Another, which amongst other things also laid down that -

A mortgage which is voidable u/s 53 is only voidable to the extent to which the property transferred is necessary to satisfy the creditors of the insolvent.

The two learned counsel for the respondents were not able to cite any authority to the contrary.

7. In view of the rule laid down in the above Madras case and explicit provisions made in section 53 of the Act, the three sales made by the two insolvents in favour of the petitioners could have been annulled to the extent to which the property transferred thereby was necessary to satisfy the creditors of the insolvents and no more. The Insolvency Court and the learned Additional District Judge in passing the impugned order exceeded the jurisdiction vested in them under the law.

8. For the above reasons, the two revision petitions are allowed and the impugned order passed by the learned Insolvency Court and affirmed by the learned Additional District Judge is set aside and it is declared that the three sales in question are voidable to the extent to which the property transferred is necessary to satisfy the creditors of the two insolvents. The parties are left to bear their own costs throughout.