(1938) 10 MAD CK 0030

In the Madras High Court

Tenneti Viswanadham — APPELLANT

Vs

M.S. Menon, Official Liquidator of the Swarajya Printing and Publishing Company Limited and Another — RESPONDENT

Date of Decision : 18-10-1938

Acts Referred:

Companies Act, 1956 — Section 108
Transfer of Property Act, 1882 — Section 59

Citation : AIR 1939 Mad 202 : (1939) ILR (Mad) 199 : (1938) 48 LW 952 : (1939) 1 MLJ 185

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

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—By a resolution dated the 7th July, 1935, the Swarajya Printing and Publishing Company, Limited,

Madras, a company incorporated under the Indian Companies Act, 1913, resolved to issue 1,000 debentures of Rs. 50 each and 922 of these

debentures were issued. There was no debenture trust deed, but on each certificate the conditions of issue were printed and the loan was stated to

be on the security of specified immovable property. The debentures were registered with the Registrar of Joint Stock Companies pursuant to

Section 108 of the Indian Companies Act, but they were not registered under the Indian Registration Act. The company is now in liquidation, and

the question is whether the holders of these debentures are entitled to rank as secured creditors. The question was considered by Gentle, J., on an

application by the Official Liquidator, who is the first respondent in this appeal. The Official Liquidator contended that the debentures were invalid

for two reasons. In the first place, he said that the wording of the debentures operated to create a mortgage and not merely a charge and therefore by reason of Section 59 of the Transfer of Property Act, registration was compulsory. The second reason was that even if there was a mere

charge and not a mortgage, Section 100 of the Act still made registration necessary. The learned Judge accepted the contention that a mortgage

had been created and he consequently held that the debentures were invalid. In the circumstances it was not necessary for the learned Judge to

consider the second point. The debenture-holders have appealed.

2. We agree that the debentures are invalid for want of registration, but we prefer to base our decision on the provisions of Section 100 of the

Transfer of Property Act read with Section 59. We do not suggest that the case was not rightly decided on the first point taken by the Official

Liquidator, but the question is not free from difficulty and it seems to us that by reason of the sections, I have just mentioned, registration was

necessary even if only a charge was created.

3. Section 59 of the Transfer of Property Act admittedly requires a simple mortgage to be registered, even when the mortgage-debt is less than Rs.

50. The section reads as follows:

Where the principal money secured is one hundred rupees or upwards a mortgage other than a mortgage by deposit of title-deeds can be effected

only by a registered instrument signed by the mortgagor and attested by at least two witnesses.

Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by a registered instrument signed and

attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property.

4. As a simple mortgage cannot be effected by delivery of the property it can only be effected by a registered instrument, and Section 4 of the

Transfer of Property Act directs that Section 59 shall be read as supplemental to the Registration Act. The first clause of Section 100 as amended

by Act XX of 1929 provides:

Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the

transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained

which apply to a simple mortgage shall, so far as may be, apply to such charge.

5. Before the amendment this clause read as follows:

Where immovable property of one person is by act of parties or operation of law, made security for the payment of money to another and the

transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained

as to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of Sections 81 and 82 shall, so far as may be"",

apply to the person having such charge.

6. By the amendment all the provisions of the Transfer of Property Act which precede Section 100 have been applicable ""so far as may be"" to a

charge. Therefore unless the words ""so far as may be"" operate to sever Section 59 from Section 100, registration of a charge is necessary. We do

not consider that these words have the effect of taking Section 59 out of the purview of Section 100. Section 100 applies all the provisions of the

Act with regard to a simple mortgage to a charge, unless a particular provision is incompatible with a charge. Registration is surely not

incompatible. Section 17 of the Registration Act requires a charge if for Rs. 100 or upwards to be registered, and by virtue of Section 4 of the

Transfer of Property Act Section 59 has now to be read as being supplemental to Section 17 of the Registration Act. If the words in Section 100

of the Transfer of Property Act are to be given their plain and ordinary meaning we are of the opinion that Section 59 cannot be excluded. In the

course of the arguments our attention was drawn to the decision of Varadachariar and Mockett, JJ., in Kuppuswami ,v. Rasappa Chettiar (1936)

44 L.W. 438. The learned Judges there were considering whether there could be an oral charge and the case was one which was instituted before

the amendment of the Transfer of Property Act in 1929. The learned Judges were not considering the question now before us and their decision

has no application here.

7. For the reasons indicated we hold the debentures in question are Invalid by reason of non-registration, and the appeal must be dismissed with

taxed costs in favour of the Official Liquidator.

