
(1964) 07 AP CK 0020
In the Andhra Pradesh High Court
Case No : A.A.A.O. No. 103 of 1960

The Official Receiver, Nellore

APPELLANT

Vs

Pavuloori Veeraiah and Others

RESPONDENT

Date of Decision : 31-07-1964

Acts Referred:

Provincial Insolvency Act, 1920 — Section 4

Citation : AIR 1966 AP 114

Hon'ble Judges : P. Chandra Reddy, C.J.;Narasimham, J

Bench : Division Bench

Advocate : D. Narasaraju, for P. Ramarao, for the Appellant; N. Rajeswara Rao, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, J.—This second appeal arises out of an application filed by the Official Receiver, Nellore, under Sections 4 and 53 of the Provincial Insolvency Act, to annul the decree in O. S. 89 of 1952 of Sub Court, Tenali, and the sale held in execution thereof.

2. The Subordinate Judge of Bapatla, to whom the application was made invoking his insolvency jurisdiction, allowed the application holding that the decree and the execution proceedings were all collusive. On appeal the learned Additional District Judge held differing from the Subordinate Judge that the decree and the execution proceedings could not be annulled either under 4 and 53 of the Provincial Insolvency Act, The Official Receiver has preferred this second appeal aggrieved by the dismissal of his application.

3. The application was made in the following circumstances: The 4th respondent herein Narayyu was the insolvent who was adjudged on 19-3-1956 on a creditor's petition filed on 7-2-1956. The said Narayya had earlier executed a promissory note dated 21-8-1950 for Rs. 3100 in favour of Anandayya, the 3rd respondent herein. The 3rd respondent endorse it in favour of Anjayya, the 2nd

respondent herein. The said Aujayya filed O. S. 89 of 1952 in the Sub Court, Tenali, to recover the amount due under the pronote and obtained a decree against Narayya on 29-10-1952, It would appear that Narayya represented to the Court that a decree could be passed against him. The decree was executed by the Kanigiri District Munsif in whose jurisdiction Narayya had lands, Narayya's lands comprising an extent of ac. 22-38 cents were sold on 15-2-1955, the highest bidder being the decree-holder himself and the decree holder obtained delivery on 20-1-1956. Thereafter, as has been said, a creditor filed a petition for adjudication of Narayya as an insolvent and he was so adjudicated on 19-3-1956. It would appear that Narayya, the insolvent, was ex parte and the petitioning creditor did not examine himself.

4. The Official Receiver applied to annul the decree and the sale for Rs. 2,495. He alleged that the decree in O. S. 89 of 1952 and the execution proceedings therein were entirely devoid of consideration and good faith and were therefore liable to be set aside. He alleged that Narayya, the insolvent, himself was in possession of the lands which were sold in court-sale. Narayya remained ex parte in the application. The purchaser, the 2nd respondent, repudiated the allegations and claimed to be a purchaser in good faith and for valuable consideration. The 3rd respondent, that is to say, the payee under the promissory note supported the allegations of the Official Receiver that there was no consideration for the note as also the endorsement.

5. The learned Subordinate judge held that there was no consideration either for the pronote, Ex. A. 1, or the endorsement thereof, that the suit O. S. 89 of 1952 was collusive, that the lands were sold for a grossly inadequate sum, that they were worth over Rs. 20,000 and that Narayya himself was in possession through Veerayya, the 1st respondent and set aside the sale.

6. The Additional District Judge, to whom the matter was carried in appeal, agreed with the findings of the court below that the endorsement in favour of the 2nd respondent was unsupported by consideration and that the lands were sold for a grossly low price. But with regard to the pronote he found differently that although it was not supported by other consideration, though he did not say what it was. He said nothing of the possession of the lands which were sold.

7. Sri Narasaraj for the Official Receiver appellant has argued before us that assuming that the lower court was right in rejecting relief u/s 53 of the Provincial Insolvency Act, it could not have rejected the relief prayed for u/s 4 of the Provincial Insolvency Act.

8. The sole question for us to consider is if Section 4 of the Provincial Insolvency Act could be successfully called in aid for obtaining the reliefs prayed for. The section is in these terms, in so far as it is relevant:

"(1) Subject to the provisions of this Act the Court shall have full power to decide all questions whether of title or priority, or of any nature whatsoever, and whether involving matters of law or of fact, which may arise in any case of

Insolvency coining within the cognisance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case."

9. Under the scheme of the insolvency law, on adjudication, the Receiver is to take possession of the assets of the debtor, ascertain the liabilities and then make an equitable distribution of the assets among the creditors. The express language of the section brings out the object of the insolvency law. The powers of the insolvency court under the section are wide and necessarily exercisable to achieve the said object. Sections 53 and 54 are specific provisions for avoidance of transfers to defeat the creditors and transfers preferring a creditor fraudulently.

10. But, in this case there are good reasons to believe that the entire insolvency proceedings were engineered by the debtor himself seeking to benefit by these proceedings. It has been observed by the lower appellate court thus in para 11 of the judgment:

"In February, 1956 after the property was knocked down and was taken delivery through court and a delivery receipt was passed, one Satyanarayana came with an Insolvency petition to adjudge 4th respondent as an insolvent. The allegations in it were that 4th respondent WHS indented on a pronote of 1955 for Rupees 689-15-0 and executed a fraudulent sale deed in January, 1956. The execution of that sale deed, the act of insolvency claimed for the application was 25 days after the application for delivery was made by 2nd respondent. The contesting respondents contend that the I. P. itself was sponsored by 4th respondent. Indisputably 4th respondent had other property for more in value than what the petitioning creditor claimed as due to him from 4th respondent. He did not seek to get Ins money by a suit and proceeding against that other property far more sufficient to answer his claim, but came with an application to adjudge the 4th respondent as an insolvent. With that application he made an application u/s 20 to get possession of these Aravallipadu lands and the crop thereon. That was after 2nd, respondent moved for delivery of those lands with the crop. To the insolvency application and to interlocutory application Satyanarayana did not implead 2nd respondent as a party. In both the applications, 4th respondent remained ex parte and both were ordered on 2-3-1956 and 19-3-1956. That Satyanarayana himself did not go into the box in this enquiry. All these cumulatively smack suspicion of existence of a hidden hand behind these insolvency proceedings and that could be of 4th respondent as well, as claimed by the contesting respondents 1 and 2."

11. From this it is seen that although the 4th respondent had ample properties to satisfy the debt of Satyanarayana, yet that Satyanarayana chose a relief in insolvency. At the enquiry, the creditor did not examine, himself and furthermore the 4th respondent was ex parte. The appellate court also observed that there was no satisfactory proof of other debts. There is evidence fully supporting the said opinion of the lower appellate court. R. W. 8 (R 1) deposed that the 4th respondent had no other debts excepting the one that he owed him. R.W. 8 also

said that the 4th respondent was conducting the litigation. It is in the evidence of the Karnam of Aravallipadu. where the lands" were situated. (R. W. 6) that the patta stood in the name of the insolvent, the 4th respondent. That is to say, the evidence shows that the insolvent is behind the litigation, that he is in possession of the lands sold, that he is possessed of sufficient properties and that it is not convincingly established that there were other debts for him. These are clinching circumstances to show that the Official Receiver"s application, if successful, would yield benefits to the insolvent. That is not the object to be achieved by Section 4 of the Provincial Insolvency Act.

12. We are therefore unable to accept the contention of Sri Narasaraju that Section 4 of the Provincial Insolvency Act could be appropriately called in aid by the Official Receiver in this ease.

No other points are, raised before us. The appeal is dismissed with costs.