

(1958) 03 MAD CK 0041

In the Madras High Court

Case No : Letters Patent Appeal No. 45 of 1957

Thiruvengada Mudaliar

APPELLANT

Vs

T. Narayana Reddiar and Others

RESPONDENT

Date of Decision : 04-03-1958

Acts Referred:

Provincial Insolvency Act, 1920 — Section 28(2)
Specific Relief Act, 1877 — Section 42
Transfer of Property Act, 1882 — Section 2, 5, 53

Citation : AIR 1959 Mad 141

Hon'ble Judges : P.V. Rajamannar, C.J.; Ramachandra Iyer, J

Bench : Division Bench

Advocate : G.R. Jagadesan, for the Appellant; K.S. Champakesa Iyengar, K.C. Srinivasan, V. Seshadri, K.S. Ramamurthy and T.L. Nagaraja Rao, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Rajamannar, C.J.—Two points were urged before us by Mr. G. R. Jagadesan, learned counsel for the appellant who was the second defendant in a suit brought by the first respondent in the court of the Subordinate Judge, Vellore, O. S. No. 96 of 1948. That suit was filed in a representative character on behalf of a body of creditors of four persons who were members of a joint Hindu family. The plaintiff himself was the decree-holder in O. S. No. 42 of 1937.

There were several other decrees in favour of the other creditors. Two of the debtors were adjudged as insolvents in 1936. When attempts were made by certain of the decree-holders to bring certain properties to sale in execution of that decree it was found that the properties had been sold in execution of a decree in another suit, O. S. No. 67 of 1934, which had been obtained by one Narayana Nadar against the same debtors.

That sale was alleged to have taken place on 25-4-1947, and the same was confirmed in June 1947. The plaintiff alleged in the present suit that the decree

in O. S. No. 67 of 1934 in which the properties had been sold and purchased by the second defendant the appellant before us, and the execution proceedings in that decree were fraudulent and collusive and no title really passed to the auction-purchaser in that sale.

He prayed for a declaration that the proceedings in execution of the decree in O. S. No. 67 of 1934 upto and including the sale therein on 25-4-1947 and confirmation on 27-6-1947 and the possession proceedings were all void and a nullity on account of fraud and collusion and that the real as well as the beneficial interest in the properties continued with the owners, that is, the debtors. The plaintiff made the official receiver, North Arcot, party defendant.

2. Neither the Court in which the suit was filed nor the appellate court, the District Court of North Arcot. dealt with the merits of the suit. Both the courts dismissed the suit on the ground that it was not maintainable on two grounds, viz., (1) that the suit was not maintainable u/s 53 of the Transfer of Property Act, and that there was no other provision under which the suit could be maintained, and (2) that the suit was not maintainable because leave of the Insolvency Court had not been obtained for its institution u/s 28(2) of the Provincial Insolvency Act.

The plaintiff filed a second appeal to this court which was heard and disposed of by Ramaswami Gounder J. in S. A. No. 781 of 1934. He disagreed with the courts below on both the points and held that the suit was maintainable and remanded the suit to the trial court for disposal on merits. He, however, granted leave to appeal and hence this Letters Patent Appeal by the second defendant, auction-purchaser in the sale in execution of the decree in O. S. No. 67 of 1934.

Learned counsel for the appellant once again pressed before us both the grounds. So far as the first ground is concerned it was conceded before Ramaswami Gounder J. and very property, that Section 53 of the Transfer of Property Act cannot in terms apply to the case. The learned Judge proceeded on that basis, but held that apart from the provisions of Section 53 of the Transfer of Property Act, the suit was maintainable and he relied on a ruling of a Division Bench of this Court reported in *Rm. N.L. Kr. Ramanathan Chettiar Vs. Unnamalai Achi and Another*, .

Undoubtedly that ruling directly applies to this case. The only material difference, so far as the facts are concerned, is that in that case the properties had been attached but in the present case there has been no such attachment by the plaintiff but this difference would not in our opinion make that decision any the less applicable. The learned Judges, it may be observed, did not hold that the suit was maintainable u/s 42 of the Specific Relief Act.

Indeed we find no reference to this provision in the judgment. It has been held over and over again that Section 42 of the Specific Relief Act is not exhaustive of the category of declaratory suits and the law does allow suits for a mere declaration which may not strictly fall within that section. We do not think that

the subsequent decision of a Division Bench in *Krishnaveni Ammal v. Soundararajan*. 1944 2 Mad LJ 231 compels us to hold that the suit is not maintainable.

In that case it was no doubt held that a suit for declaration that a particular property continued to belong to the judgment-debtor in spite of the sale which took place before the institution of the suit would not be a suit falling within Section 42 of the Specific Relief Act. We must confess that we are not disposed to agree either with the reasoning or with the decision in that case but we do not think it necessary to discuss it at any length nor refer the matter to a Full Bench. Assuming that that decision is correct, all that was held there was that a suit like the present would not be maintainable under Section 42 of the Specific Relief Act.

But that decision is not certainly authority for holding that a suit is not otherwise maintainable. It must not be overlooked that the decision in *Rm. N.L. Kr. Ramanathan Chettiar Vs. Unnamalai Achi and Another*, had been rendered before the case in *Krishnaveni Ammal and Another Vs. M.D. Soundararajan and Others*, was decided, but we find no reference to the earlier decision in the judgment of the learned Judge who delivered the judgment of the Bench. We, therefore, feel free to follow with respect the decision in ILR (1943) Mad 47: AIR 1642 Mad 632, which directly applies to the facts of the case. Following that decision we overrule the first contention of the learned counsel for the appellant.

3. The next ground of objection to the maintainability of the suit is based on the provisions of Section 28(2) of the Provincial Insolvency Act. It suffices to overrule the second objection of the learned counsel by saying that in the present case it cannot be said that the plaintiff is seeking any remedy against the properties of the insolvent.

In this view it is unnecessary to refer to the rulings in *Chidambaram Chettiar (died) and Others Vs. Sellakumara Goundan and Others*, and *Jaina Muhammad Sheriff Maracair and Others Vs. Official Assignee of Madras and Others*, which were sought to be distinguished as relating to a case where the concerned property did not pass out of the estate of the insolvent before adjudication.

4. As both the grounds urged by the learned counsel for the appellant fail the Letters Patent Appeal must be and is hereby dismissed with costs of the plaintiff-respondent.