(1943) 10 MAD CK 0029

In the Madras High Court

V. Vr. N. Vr. Nagappa Chettiar APPELLANT

Vs

Ramanatha Ganapadigal and Another RESPONDENT

Date of Decision : 18-10-1943

Acts Referred:

Citation : AIR 1944 Mad 208 : (1944) 57 LW 39 : (1943) 2 MLJ 677

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—In the suit out of which this second appeal arises the plaintiff sued for a declaration that the property which he sought to attach belonged to his judgment-debtor, the second defendant, and not to his sister''s son, the first defendant, in whose grandfather''s favour he had executed a sale deed on the 9th January, 1912. Both the lower Courts found that the transaction of the 9th January, 1912, was a sham and nominal one and that the property continued to belong to the plaintiff''s judgment-debtor, the second defendant, down to the date of the attachment. As this is a finding of fact it has not been canvassed in this Court.

2. Two arguments have been put forward on behalf of the appellant, the first defendant. The first is that as the second defendant could not question the right of the first defendant in a transaction to which they were both parties and in which they had jointly committed fraud, the position of the plaintiff could not be any better, because he claimed through the second defendant and is equally bound by the estoppel which would operate against the second defendant if the second defendant had put forward this claim. That is however not the case. Estoppel operates personally against the person who is estopped, not ordinarily against any one claiming through him. Mr. Padmanabha Aiyangar relies on the decision in Audinarayudu v. Mangamma (1943) M.W.N. 605 where the question arose whether a creditor could attach property which his judgment-debtor had purported to transfer and to which Section 53-A of the Transfer of Property Act applied. There, the decision of the learned Judge turned upon the peculiar

wording of Section 53-A, which says, "the transferor or any person claiming under him shall be debarred from enforcing against the transferee... any right in respect of the property;" so that Audinamyudu v. Mangamma (1943) M.W.N. 605 cannot have any application to a case which is unrelated to Section 53-A of the Transfer of Property Act.

3. The second argument of Mr. Padmanabha Aiyangar is a very ingenious one and it is this : according to the findings of the lower Courts, the property belongs to the second defendant and by virtue of Section 28 of the Provincial Insolvency Act all the property of the insolvent--necessarily including this property which was secreted in the name of the first defendant--vested in the Official Receiver; upon his discharge the property did not revest in the insolvent but continued to be available for the creditors in the insolvency application and therefore the property even to-day does not belong to the insolvent, the second defendant; the first defendant, who is in the position of a trespasser, is therefore entitled to remain in possession until disturbed by the lawful owner, the Official Receiver. In the first place, we know very little about the insolvency proceedings, except that the insolvent did not show any immovable property in his schedule and that he was discharged with the remark " There is no opposition. The discharge order is granted." If none of the creditors proved, as seems to have been the case, then whatever may have been the property belonging to the insolvent it would have had to be given back to him at the termination of the administration. In C.D. Desikachari Vs. The Official Receiver and Others, the learned Judges had to consider a somewhat similar argument, although in that case there was no question of fraud or bad faith. The learned Judges said that although Section 37 of the Provincial Insolvency Act applies only to the annulling of an adjudication and not to the case of a discharge; yet the principle enunciated in this section applied and that when once the insolvent had been discharged the administration came to an end. Whatever property remained had to be given back to the judgment-debtor and became his and would not therefore be available on the application of creditors after the insolvent had been discharged. If that is so, then upon the discharge of the second defendant the property became his once again and was therefore available for attachment by the respondent.

4. I think that this argument of the appellant would also have to be repelled on the ground that the first defendant is seeking to retain possession of the property by relying on his own fraudulent act in obtaining possession to shield this property from the creditors. This he cannot be allowed to do.

5. The appeal is dismissed with costs.