
(1960) 07 AP CK 0002

In the Andhra Pradesh High Court

Case No : Letters Patent Appeal No. 66 of 1959

Vallabhaneni Buchiramayya and Others

APPELLANT

Vs

Sri Davlapatla Mariyya and Another

RESPONDENT

Date of Decision : 15-07-1960

Acts Referred:

Provincial Insolvency Act, 1920 — Section 6

Citation : AIR 1961 AP 97

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

Bench : Division Bench

Advocate : C. Padmanabha Reddy, for the Appellant; B. Rajabhushana Rao, P. Babulu Reddy and I. Koti Reddi, for the Respondent

Final Decision : Allowed

Judgement

P. Chandra Reddy, C.J.—This appeal raises a question relating to the interpretation of Section 6(e), of the Provincial Insolvency Act, 1920.

2. The material facts leading to; this appeal may be briefly set out. The respondents owed the appellants certain sums Of money on promissory notes and some others and some of the creditors" filed suits against the respondents for recovery of the money and obtained decrees against them. In execution of one of such decrees, their property was brought to sale on 31st August, 1954 and it was purchased by one Punniiah. Shortly, thereafter, the appellants presented a petition in the District Court, West Godavari, u/s 7 to adjudicate the respondents as insolvents basing it inter alia on the sale of the property in execution of the decree. Pending disposal of this petition, the sale was set aside under Order 21 Rule 89 C.P.C.

3. The petition was opposed by the respondents on the ground that they had not committed an act of insolvency within the meaning of Section 6 Sub-clause (e) as the sale was set aside.

4. The opposition was over-ruled by the District Judge in the view that the sale of

the property in execution of the decree was an act of insolvency, despite the fact that it was subsequently set aside under Order 21, Rule 89 C.P.C. In the result, the debtors, i.e., the respondents, were adjudicated insolvents.

5. The aggrieved party brought the matter in appeal to the High Court, in C.M.A. No. 209 of 1958, contending that Sub-clause (e) of Section 6 ceased to apply the moment the sale was set aside and that it would govern only cases of sales which had become absolute. This submission prevailed with Sanjeeva Row Nayudu J., who heard the appeal. The learned Judge accepted the appeal and set aside the trial court's order. Hence the appeal.

6. The view of the learned Judge that so long as the sale had not become absolute and title had not passed thereunder to the purchaser, the property could not be regarded as having been sold is canvassed in this Letters Patent Appeal. According to the learned Judge, the sale is deemed to have taken place when the property in the thing sold has passed to the buyer. We do not think that we can accede to this proposition. It is worthy of note that Sub-clause (e) does not talk of the property sold in execution of the decree and confirmed. This clause concerns itself only with the sale of the property. It should be remembered that the sale of property and the confirmation of sale of that property are two distinct things and they embody two different legal concepts. Here we are unconcerned with the question whether indefeasible title had vested in the purchaser or not. The only consideration in this behalf is whether an act of insolvency has been committed. That the sale and confirmation of sale connote two different things can also be seen from the language of Order 21 Rules 89 and 90 C.P.C. These two rules use the words "where any immovable property has been sold in execution of a decree" to indicate that there is a sale of property which is antecedent to its confirmation or its becoming absolute under Rule 92 of Order 21.

It can be gathered from the language of these rules that the sale of immovable property and the sale being confirmed are two different things.

The legislature has made a provision for setting aside sales either under Rule 89 or Rule 90, before sales become absolute, thereby implying that the holding of the sale is not the same: thing as the confirmation thereof. There is no reason why greater weight should be given to the words "property has been sold in execution of the decree" in section 6 Sub-clause (e) than to the expression "property has been sold in execution of a decree" employed in Order 21.

7. The reason for enacting Clause (e) seems to be that the debtor who has allowed his property to be sold in execution of a decree should be looked upon as having committed an act of insolvency because he is in an embarrassing financial position and, therefore, allows his property to be sold in public auction.

8. In this connection, we may re-produce a passage from the judgment of a Bench of the Madras High Court in Venkatakrishnayya v. Malakondayya, (1942) 1 Mad LJ 38 : (AIR 1942 Mad 306) which brings out the principle underlying this

clause. It is in these words:

"Having these considerations in mind it is but natural that the legislature should lay down as one of the criteria for judging whether a man's ostensible credit has been shaken, the fact of a sale in court of his assets in execution of a decree. The question whether the sale is eventually set aside for some irregularity or whether the debtor eventually finds it to his interest to deposit the amount of the particular decree is not really material. It is the very fact that his circumstances are sufficiently embarrassed to make him submit to a sale of his property, which justifies the creditor in asking the insolvency court, to take charge of his estate."

9. This decision contains the proposition that this clause has not within its contemplation an indefeasible sale and it refers to a sale which has actually been held though it might be set aside as a result of subsequent proceedings.

10. Sanjeeva Row Nayudu, J., said that he was not bound by this Bench decision for the reason that in that case the sale was set aside on appeal by the appellate court and not by the trial court. We do not think that the fact that the sale was set aside on appeal makes any difference for the decision of the question in issue. There, it was laid down that when there was in fact a sale in execution, a subsequent deposit whereby the sale was set aside or a subsequent objection founded on some material irregularity resulting in the setting aside of the sale would not alter the fact that the property was sold in execution of the decree. It is thus clear that that ruling is applicable to all cases of sales held in execution of a decree and which were subsequently set aside either under Order 21 Rule 89 and Rule 90 C.P.C. The instant case falls within the ambit of the rule stated therein and we are in respectful agreement with the opinion expressed by the learned Judges.

11. The doctrine of that case was applied in *Jivanlal Chimanlal Mehta Vs. Pramodchandra Chimanlal Mody*, where Section 9 of the Presidency Towns Insolvency Act fell to be considered. Chagla C.J. who spoke for the Bench observed that the proposition adumbrated in 1942-1 Mad LJ 38: (AIR 1942 Mad 306) would apply to Section 9 of the Presidency Towns Insolvency Act as well. The learned Chief Justice observed that the selling of property in execution of the decree envisaged by Section 9(1)(e) of the Presidency Towns - Insolvency Act was the selling of the property in the sense of its being knocked down to the highest bidder as an act of insolvency and not the sale becoming confirmed or becoming absolute under Order 21 Rule 92 C.P.C.

12. 1942-1 Mad LJ 38: (AIR 1942 Mad 306) (supra) was followed by a Bench of the Nagpur High Court in *Gulabchand v. Durga Bank Ltd.*, AIR 1954 Nag 286. The learned Judges observed in the cited case that even if the sale was subsequently set aside, the sale of the debtor's property would amount to an act of insolvency within the scope of Section 6, Sub-clause (e). This view is also supported by *Kanailal v. Tinkari De*, AIR 1933 Cal 564 in which it was held that the act of insolvency alleged in Section 9 Clause (e) occurred when the property was sold

and not when the sale was confirmed. No ruling which has taken a contrary view has been brought to our notice.

13. There is another consideration which exposes the untenability of the argument that it is only when the sale held in execution of a money decree is confirmed that an act of insolvency is said to have been committed. If this interpretation is accepted, Section 6 Sub-clause (e) will become otiose. Every petition u/s 9 has to be presented within 3 months of the commission of the act of insolvency. But if a creditor has to await the disposal of a petition under Order 21 Rule 89 or Rule 90 C.P.C. the final disposal of which petition may normally take much more than 3 months, he cannot avail himself of Sub-clause (c) of Section 9. It cannot be overlooked that even if the petition is disposed of within 3 months by the trial court, its decision is subject to appeal which cannot be disposed of within the time prescribed by Section 9 Sub-clause (c). That would not have been the intention of the legislature, and that will defeat the object of enacting this clause.

14. On the language of this section and the authorities, there can be little doubt that in order to attract this sub-clause it is sufficient if there is a sale in execution of a decree and that it is not necessary that the sale should be confirmed. The fact that subsequently such a sale was set aside is immaterial. It follows that the judgment under appeal is unsustainable.

15. We accordingly allow the appeal, set aside the judgment appealed against and restore that of the trial court.