

(2007) 01 AHC CK 0070

Allahabad High Court

Case No: None

Ram Singh

APPELLANT

Vs

VII Additional District Judge and
Others

RESPONDENT

Date of Decision: Jan. 5, 2007

Acts Referred:

- Provincial Insolvency Act, 1920 - Section 53, 9

Citation: (2007) 3 ADJ 236 : AIR 2007 All 102 : (2007) 2 AWC 1362

Hon'ble Judges: S.U. Khan, J

Bench: Single Bench

Final Decision: Disposed Of

Judgement

S.U. Khan, J.

In spite of sufficient service contesting respondents did not engage any counsel, hence only the arguments of learned Counsel for the petitioner were heard on 22.11.2006 when the case was heard and judgment was reserved.

2. One Alam sold the agricultural property in dispute having an area of 3 Bighas 14 Biswas to the petitioner. The sale deed was executed on 8.8.1967 and was registered on 12.9.1967. Thereafter on 19.10.1967 Data Ram (since deceased and survived by respondents 4 to 9), one of the creditors of Alam, the vendor filed an application u/s 9 of Provincial Insolvency Act for adjudging Alam Insolvent Application was allowed on 20.2.1969. Appeal filed against the said order was dismissed on 18.4.1970. Thereafter official Receiver filed an application on 9.12.1970 for annulment of sale deed dated 8.8.1967 u/s 53 of Provincial Insolvency Act. By virtue of the said section sale deed executed within two years before filing of Insolvency Petition is voidable as against the Official Receiver and may be annulled by the Court if the transfer is not in good faith and valuable consideration. Property in dispute was sold for Rs. 1,000/-. Application of the official Receiver for annulment

of the sale deed was registered as Miscellaneous Case No. 323 of 1970 arising out of Insolvency Case No. 18 of 1967 on the file of Insolvency Judge, Agra, The Insolvency Judge through order-dated. 18.1.1974 held that the sale consideration was quite inadequate and petitioner was not bonafide purchaser for valuable consideration. Consequently, the sale deed in question was annulled by order dated 18.1.1974. Against the said order petitioner filed Miscellaneous Appeal No. 48 of 1974. VII A.D.J. Agra through judgment and order dated 6.2.1985 dismissed the appeal, hence this writ petition.

3. Both the courts below held that adjoining agricultural land belonging to Muchchi Ram was sold by him for Rs. 2,000/- per Bigha in 1970. Muchchi Ram was examined as a witness and certified copy of the sale deed executed by him was also filed. On the basis of the said evidence the courts below concluded that in 1967 market value of agricultural land in the area in question was in between Rs. 1000/- to Rs. 1500/- per Bigha. It was also noticed that apart from the land in dispute the vendor Alam had no other property except a very small Kachcha house and after selling the land in dispute Alam left the village and returned after about 2 years and started residing with his aunt.

4. Section 53 of the Provincial Insolvency Act is quoted below:

53. Any transfer of property not being a transfer made before and in consideration of marriage or made in favour of a purchaser or encumbrancer in good faith and for valuable consideration shall, if the transferer is adjudged insolvent on a petition presented within two years after the date of the transfer be voidable as against the Receiver and may be annulled by the Court.

5. In respect of knowledge of the petitioner about the debt incurred by Alam, the insolvent, courts below held that the petitioner could not show that he made reasonable inquiries about the indebtedness of his vendor Alam. However, there is no specific finding that the petitioner was aware about the debts. Mainly the sale deed has been held to be voidable on the ground of inadequacy of sale consideration. According to the courts below reasonable consideration could be about Rs. 4,000/-.

6. Learned Counsel for the petitioner has challenged the findings of the courts below holding the sale deed not to be bonafide and for inadequate consideration. However, learned Counsel for the petitioner stated that petitioner was ready to pay such reasonable amount, which could be determined by the court to the Official Receiver for satisfying the debts of creditors of Alam.

7. If inadequacy of the sale consideration is the main ground for holding a deed to be voidable, then in certain circumstances instead of canceling the sale deed, award of reasonable amount to the offended party may be the more appropriate relief. More over, the purpose of annulling sale deed after holding it to be voidable u/s 53 of the Provincial Insolvency Act is to vest the property in Official Receiver so that he

may sell it and satisfy the claims of the creditors against the insolvent debtor. If the same purpose is achieved by directing the purchasers/vendee to pay reasonable amount, then it is not always necessary to cancel the sale deed. Accordingly I am of the opinion that under the facts and circumstances of the present case instead of canceling the sale deed in question/holding the cancellation order passed by the courts below to be correct, the proper relief would be to direct the petitioner to pay to the Official Receiver Rs. 35,000/- for being paid to the Creditors of Insolvent Alam.

8. Accordingly, writ petition is disposed of with the direction that in case within six months from today the petitioner deposits Rs. 35,000/- before the Insolvency Judge in the case in question for being made available to the Official Receiver for discharge of the debts of the creditors of Insolvent Alam, then the impugned orders shall stand set aside, However, in case the amount of Rs. 35,000/- is not deposited within six months from today, then the impugned orders shall stand and the sale deed in question shall stand annulled.

9. Writ petition is accordingly disposed of.