AIR 1977 All 77

Allahabad High Court

Case No: F.A.F.O. No. 264 of 1970

Official Receiver, Muzaffarnagar		APPELLANT
	Vs	
Chandra Shekhar and Others		RESPONDENT

Date of Decision: Oct. 6, 1976

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 64
- Provincial Insolvency Act, 1920 - Section 53, 75(3)

Citation: AIR 1977 All 77

Hon'ble Judges: K.N. Seth, J

Bench: Single Bench

Advocate: R.H. Zaidi, for the Appellant; B. Dayal and Vishnu Sahai, for the Respondent

Final Decision: Dismissed

Judgement

K.N. Seth, J.
This appeal arises out of an insolvency proceeding. Ghasita was adjudged insolvent on 24-2-1967 in Insolvency Case No. 78 of 1966. The Official Receiver filed a petition for annulment of three sale deeds executed by him on 24-5-1966. Two of the sale deeds were in favour of his two sons, Fazla and Qasim. The third sale deed was executed in favour of respondents Nos. 1 to 3. It was alleged that the sale deeds in favour of the sons were without consideration and fictitious and had been executed solely for the purpose of defrauding and defeating the creditors. With regard to the third sale deed it was asserted that the vendees knew fully well of the indebtedness of Ghasita and had also knowledge that the property had been attached before judgment at the instance of Yasin, creditor, in suit No. 428 of 1966 of the Court of the Munsif, Muzaffarnagar, and that respondents Nos. 1 to 3 were not transferees in good faith and the sale deed was executed for inadequate consideration and to save the property from the creditors.

2. The petition was contested by respondents Nos. 1 to 3 who pleaded that they were purchaser for value in good faith and that they had no knowledge of indebtedness of Ghasita or of the suit filed against hum by Yasin.

3. The Insolvency Judge held that the sale deeds in favour of Fazla and Qasim, sons of insolvent, were fictitious and no title passed to the vendees under the sale deeds. With regard to the third sale deed it was held that respondents Nos. 1 to 3 were transferees for value in good faith. It was obtained for adequate consideration and the vendees had no knowledge of the indebtedness of Ghasita. It was further held that since the sale deed was executed and presented for registration before the order of attachment before judgment was passed, the order of attachment did not affect the rights of the vendees. The Official Receiver has challenged the correctness of the order of the learned Insolvency Judge with regard to the sale deed in favour of respondents Nos. 1 to 3.

4. Learned counsel for the respondents raised a preliminary objection that the present appeal was not competent since it had been filed without obtaining the leave of the Court as enjoined by Sub-section (3) of Section 75 of the Provincial Insolvency Act. It was urged that the memorandum of appeal should have been accompanied by a petition for leave to appeal and leave must have been expressly sought as leave to appeal was a condition precedent for preferring an appeal u/s 75(3). In the present case no separate petition for leave ac-companied the memorandum of appeal and no leave in express terms was sought for or granted by the Court while admitting the appeal under Order 41, Rule 11, Civil P. C. The fact, however, remains that the appeal was duly admitted and notice was directed to be issued to the respondents. The Act does not specifically prescribe that a petition for leave should accompany the memorandum of appeal The fact that the High Court entertained the appeal implies that the necessary leave has been granted by the Court. I am in respectful agreement with the view expressed in Radha Mohan and Others Vs. M.C. White and Another, that leave to appeal may be granted even at the stage of final hearing if the Court is satisfied that the questions involved in the case required consideration. During the course of hearing the appellant moved an application for grant of requisite leave and I allow it. The preliminary objection must, therefore, fail.

5. It is not disputed that the insolvent executed the impugned sale deed in favour of respondents Nos. 1 to 3 on 24-5-1966 for a consideration for Rs. 2,500/-. The document was presented for registration the same day between 11-00 A.M. and 12 O''clock in the noon. That very day Yasin, a creditor of the insolvent, filed suit No. 428 of 1966 in the Court of the Munsif, Muzaffarnagar, and obtained an order of attachment before judgment of the property in question. The order was obtained after the sale deed had been presented for registration. Actual attachment was made on 31-5-1966. The sale deed was registered on 4-7-1966. It was urged that since the sale deed was registered after the property had been actually attached it was void and the vendees did not acquire any title under it. Reliance was placed on the principle laid down in Raja Ram Vs. Girraj Kishore and Another, that the benefit which belongs to a purchaser consequent upon an

execution of the sale deed cannot be availed of after an attachment order has been made. Any act done by the purchaser after the attachment order for the purpose of giving effect to the transfer must be held to be ineffective in law. The sale deed cannot be operative unless it is registered and the right to have it registered is denied to the parties to the sale by reason of attachment.

Section 64, Civil P. C. provides:--"Where an attachment has been made any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment"

A careful reading of the provision indicates that a private transfer or delivery of the property attached is not wholly void. It is void as against all claims enforceable under the attachment and not otherwise. If the intention of the legislature had been to declare the transfer to be completely void, the-words "as against all claims enforceable under the attachment" would not have found a place in the section. Section 64, Civil P. C. has been incorporated to safe-guard the interest of the creditors. It is not meant to deprive the owner of the interest of the property under attachment. As against the attaching creditor a private sale would not be effective but if the order of attachment is withdrawn or the claim of the creditor is otherwise satisfied, the sale deed executed would convey good title to the transferee. A similar question came up for consideration before a Bench of this Court in Maheshwari Khetan Sugar Mills (P.) Ltd. and Others Vs. Ishwari Khetan Sugar Mills and Others, . In that case transfer of certain shares was involved which had been attached under Order 21, Rule 46, Civil P. C. Dealing with the scope of Section 64, Civil P. C. the Court held that

"a private-transfer of share in a company after the attachment thereof is not wholly void. It is void as against all claims enforceable under the attachment and not otherwise. A property under attachment may not eventually be auctioned or transferred by or under the directions of the Court. After the debt is discharged or the decretal amount is paid up in full, the attachment can be withdrawn and the holder of the shares, whether original or transferee, regains all his rights and can deal with them in any manner he likes. A person can purchase the shares or properties under attachment with the hope that if the attachment is eventually withdrawn he would become complete owner thereof. In other words, therefore, transfer of shares under attachment is void if it becomes necessary to auction or otherwise transfer the attached shares for enforcement of the claims; but if the attachment is eventually withdrawn the transfer though made during the continuance of the attachment would be perfectly valid conferring a right in the Vendee."

6. The validity of the sale deed in favour of the respondents can be sustained on yet another ground. After the attachment of the property respondents Nos. 1 to 3 filed objection under Order 38, Rule 8, Civil P. C. That objection was allowed on 8-10-1966. The order of attachment was withdrawn and the property was released in their favour. The plaintiff thereafter did not file any regular suit challenging the aforesaid order and the

order became final. Even assuming that the sale deed could not be validly registered after the order of attachment yet on the vacation of the attachment order no invalidity could attach to the sale deed. The ex parte order of attachment must be held to be non-existent on the principle laid down in Shyam Lal Vs. State of Uttar Pradesh, Lucknow and Others, , which has been approved by another Division Bench in Sri Ram Charan Das Vs. Pyare Lal, .

7. A sale deed executed during the subsistence of an order of attachment, which was finally withdrawn after the execution of the sale deed, was held to be valid by a Bench of the Bombay High Court in Motilal Madanchand Lodha Vs. Ragho Tanaji Patil and Others, : on the principle that in such a case the claim of the decree-holder cannot be said to be enforceable under the attachment, and therefore, the private transfer made during the subsistence of attachment cannot be said to be void u/s 64, Civil P. C. I am in respectful agreement with the aforesaid view.

8. It may be noted that in Raja Ram Vs. Girraj Kishore and Another, an objection was filed under Order 38, Rule 8, Civil P. C. but it was disallowed. In the case in hand the objection of the vendee was allowed and that order became final. The principle laid down in Raja Ram''s case, even if accepted, though on the rule laid down in Maheshwari Khetan Sugar Mills (P.) Ltd. and Others Vs. Ishwari Khetan Sugar Mills and Others, it appears to be rather widely worded, is not attracted to the facts and circumstances of the present case.

9. On the principle set out above the sale deed in favour of respondents Nos. 1 to 3 must be held to be valid, not liable to annulment at the instance of the Official Receiver.

10. The appeal has no merits and is dismissed with costs.