Chacko Vs Cherian

Court: High Court Of Kerala

Date of Decision: Nov. 4, 1958

Acts Referred: Provincial Insolvency Act, 1920 â€" Section 28(7), 4, 4(2), 53
Transfer of Property Act, 1882 â€" Section 43

Citation: (1959) KLJ 78

Hon'ble Judges: C.A. Vaidialingam, J

Bench: Single Bench

Advocate: K.K. Mathew, for the Appellant; C.M. Kuruvilla and M.C. Mathew, for the Respondent

Judgement

Vaidialingam, J.
The defendant, who has lost in both the courts, is the appellant. There is no controversy about the facts which are as

follows: One Eappen and Chacko, two brothers, owned the suit properties and they sold it to one Koshy on 31-9-1105. There was an application

on 4-5-1107, Ext. A to adjudicate these two people as insolvents and the said petition is I.P. No. 21/1107. On 30-11-1108, both of them were

adjudicated insolvents. On 31-2-1111, the adjudication was annulled and an application to review the order of annulment was filed on 26-4-1111.

On 16-12-1111 Koshy, the alienee from Eappen and Chacko sold the property to the present appellant as evidenced by Ext. VI. On 13-2-1113

the review petition was allowed and the order of annulment was set aside. On 20-4-1115 the Official Receiver filed an application, Ext. C to annul

the sale deed executed by the insolvent in favour of Koshy on 31-9-1105 and the court, by its order dated 11-1-1116, set aside the transfer. It

may be stated that though the present appellant had a registered sale deed in his favour from Koshy as early as 16-12-1111, the appellant was not

made a party by the Official Receiver in his application, Ext. C. Nor did the Official Receiver mention anything about the transaction of sale

covered by Ext. VI, much less did he attack it in any manner.

2. Subsequently, on 19-5-1120 the Official Receiver sold the property and it was purchased by the present plaintiff. In due course, on 14-6-1120

the Official Receiver executed a formal sale deed to the plaintiff.

3. On the basis of the purchase from the Official Receiver, the plaintiff has filed the present suit for a declaration of title and recovery of possession

of the suit properties from the defendant.

4. The defendant contested the suit on various grounds, namely, that the Official Receiver''s sale could not convey any title to the plaintiff and that

the orders passed by the insolvency court on Ext. C are not binding on him, as he was not a party to any of those proceedings and that he is a

bona fide transferee for value from Koshy without any knowledge of the insolvency proceedings. He also contended that in any event, 6 cents out

of the suit properties had been sold under the Revenue Recovery Act and that the defendant purchased the same and that the said sale could not

be challenged by the plaintiff. The defendant also contended that the purchase by the plaintiff in the Official Receiver''s sale was benami for the

insolvents, Eappen and Chacko.

5. The trial court held that the defendant was bound by the insolvency proceedings and that he was not entitled to challenge the validity of the sale

by the Official Receiver in favour of the plaintiff. According to the trial court, once the sale in favour of Koshy has been challenged and set aside in

insolvency proceedings in law the position is that Koshy has no title to convey to the defendant. The trial court accepted the contention of the

defendant that the plaintiff was only a namelender and benamidar for the insolvents. Notwithstanding the fact that the defendant has purchased the

properties from Koshy in good faith and for consideration, the trial court held that these circumstances will not help the defendant to rely on the

sale deed in his favour by Koshy. But the trial court held that the defendant, after the purchase under Ext. VI, has paid the debts charged on the

properties and that the plaintiff is bound to reimburse the defendant in that amount and also the value of improvements claimed by the defendant in

the sum of about Rs. 760. As a condition of the plaintiff recovering the properties, the trial court directed the plaintiff to pay these amounts. The

trial court also accepted the case of the defendant about the 6 cents of land in the suit property purchased by him in the revenue proceedings and

the decree in favour of the plaintiff excluded the said 6 cents of land.

6. The defendant filed an appeal before the learned District Judge of Kottayam Challenging the decree of the trial court in favour of the plaintiff.

The plaintiff filed a memorandum of cross-objection regarding the directions contained in the trial court decree for payment of the value of

improvements and the debts discharged by the defendant. In the said memorandum of objections the plaintiff also specifically challenged the

findings of the trial court that the purchase by the plaintiff was benami for the insolvent Chacko. The learned Additional District Judge confirmed

the decree of the trial court in all respects and dismissed both the appeal of the defendant and the memorandum of cross-objections filed by the

plaintiff.

7. In second appeal by the defendant, Mr. K.K. Mathew, learned counsel for the appellant has contended that both the courts have erred in law in

decreeing the suit of the plaintiff. The appellant has been found by both the courts to be a bona fide purchaser for value without notice of the

insolvency proceedings. The Official Receiver only chose to contest the sale in favour of Koshy, but he did not care to challenge the sale by Koshy

in favour of the appellant. Nor was the appellant made a party in the application, Ext. C, filed by the Official Receiver to set aside the sale by the

insolvents to Koshy. The Official Receiver himself could not have challenged the sale in favour of the appellant under the provisions of the

Travancore Act, corresponding to section 53 of the Provincial Insolvency Act. The Official Receiver has not cared to challenge the sale in favour

of the appellant under the provision corresponding to section 4 of the Provincial Insolvency Act. Therefore, notwithstanding the annulment by the

Insolvency Court of the sale by the insolvents in favour of Koshy, the transfer by Koshy in favour of the appellant under Ext. VI stands in law and

cannot be challenged in these proceedings by the plaintiff. Both the lower courts erred in coming to the conclusion that the defendant though a

bonafide purchaser for value from the transferee of an insolvent, will be bound by the order setting aside the sale in favour of his transferor. Both

the courts have held that the plaintiff is only a benamidar for the insolvent, and therefore, there is no equity in favour of the plaintiff and even

otherwise section 43 of the Transfer of Property Act will apply. So ran the argument of Mr. K.K. Mathew.

8. Mr. C.M. Kuruvilla, learned counsel for the plaintiff, contended that the reasoning of both the courts is correct in law and also on the facts of the

case. The learned counsel argued that the application filed by the Official Receiver, Ext- C, is more one under the provision in the Travancore Act

corresponding to section 4 of the Provincial Insolvency Act. Under that section, the court has got very wide powers to go in to the title of all

parties who are in possession of the properties of the insolvent.

9. A reading of the application, Ext. C, gives the impression in my mind that it is more an application u/s 53 of the Provincial Insolvency Act. In no

sense can it be considered to be one u/s 4 of the said Act. In any event, the appellant was not a party to the said application. Mr. Mathew referred

me to certain rulings to the effect that the Official Receiver has no right to attack a transfer from a transferee of the insolvent u/s 53 of the Provincial

Insolvency Act. In Ponnammai Ammal Vs. District Official Receiver and Another, Wallace and Madhavan Nair, JJ. held that the Official Receiver

is not at liberty to attack a transfer from a transferee of the insolvent u/s 53 of the said Act. The learned Judges referred also to an arly case

reported in Jagannatha Iyengar v Narayana Iyengar (52 Indian Cases 761). In Mathukumalli Ramayya and Others Vs. Uppalapati Lakshmayya, ,

Pandalai J., has quoted with approval the decision in Jagannatha Iyengar v Narayana Iyengar (52 Indian Cases 761) and Ponnammai Ammal Vs.

District Official Receiver and Another, and observed as follows:

The questions raised by these decisions would arise for decision when it is found as a fact that respondent 6 is a bonafide transferee for value

without notice from respondent 5.

It may be stated that respondent 5 referred to in the judgment of Mr.'' Justice Pandalai was the original transferee from the insolvent. As the

question of the bonafide nature of the transfer in favour of the 6th respondent therein had not been decided by the District Court, the learned Judge

directed that also to be gone into along with certain other matters. In The Official Receiver Vs. Muhammad Meera Saheb and Another, , Mr.

Justice Varadachariar, after referring to the decision in Exparte Brown (1893-II-Q. B. 377) observed as follows:

Following that decision, it has been held in several cases that a second transferee, who bona fide takes a transfer for value from one whose

transfer offends section 53, may invoke the protection of the equitable rule in favour of transferees for value without notice - see In re Brail (1898 -

II- Q. B. 381); In re Carter (1897 -I- Chancery 776); In re Hart (1912 -III- K.B.6); and Ahmir Ahmad v Syed Hasan (I.L.R. 57 All 900). It is

possible in view of the observations in Exparte Brown (1893 -II- A.B. 377) that this principle can be invoked only by a person who has parted

with consideration subsequent to the date of the transfer by the Insolvency to the intermediate transferee"".

In Amir Ahmad Vs. Syed Hasan, which is the same as the decision in, Ahmir Ahmad v Syed Hasan (ILR 57 All. 900) referred to by Mr. Justice

Varadachari in the decision referred to earlier, Sulaiman, C.J., and Bennet J. had to deal with a case where a transferee from the transferee of the

insolvent had not been impleaded in an application by the Official Receiver to set aside a sale. The learned Judges observed at page 673 as

follows:

It therefore, follows that in order to apply section 53, the condition precedent is a finding that the transfer was otherwise than one made in good

faith and for valuable consideration. That finding of fact can be arrived at only when a dispute as to title arises between two rival claimants. When

property has been transferred by the transferee of an insolvent to a third party and the receiver is aware of the transfer, the dispute is really

between the receiver on the one hand and the subsequent transferee on the other and not between the receiver and the first transferee who has no

longer got any interest in the property left. In order to start a proceeding u/s 4, the application should therefore be by the receiver against the

person who is now claiming title to the property and an adjudication by the court on such dispute would be final and would bar a second suit and

would be binding on the parties to the proceeding. But if the receiver chooses to proceed u/s 4 against the first transferee who has no interest left in

the property, and obtains an order against him either exparte or after contest, he cannot use that order as a final adjudication of the matter in

dispute as against the real claimant of the title"".

10. Again in dealing with the contention that the order of annulment is a judgment in rem and operates against the whole world and that it dates

back to the initial transfer made by the insolvent, the learned Judges observed at page 674 as follows:

This argument is based on the insolvency jurisdiction of the court and also on section 4(2) and 28(7) of the Act. All adjudications as between the

receiver representing the whole body of creditors on the one hand and the insolvent on the other, are certainly judgments in rem and are binding on

the whole world. But when a dispute as to title to property arises between the receiver representing the creditors on the one hand and a stranger to

the insolvency proceedings the judgment would be binding on the person against whom the decision is given and not against the whole world.

11. The observations extracted above clearly show that a transferee from a transferee will not be bound by proceedings taken by the Official

Receiver u/s 53 of the Act. Such a transferee will be bound, if at all only by proceedings taken u/s 4 and it is also necessary that the said transferee

must have been made a party to those proceedings u/s 4. In the case before me, as stated earlier, proceedings were taken by the Official Receiver

not u/s 4 but only u/s 53 and even there the appellant was not made a party.

12. In Mt. Garibia Bibi Vs. Mathura Prosad Rajgharia and Others, Biswas and Rosburgh JJ. observed at page 302 as follows :

The true position seems to us to be this: the remedy in respect of the transfer to Hanif might be asked for in the alternative either u/s 53, if the facts

were so found or u/s 4 if the transactions were proved to be fictitious; but the remedy in respect of the transfer by Hanif to Gharibia Bibi could only

be obtained from the insolvency court in exercise of its jurisdiction u/s 4.

It may be mentioned that Hanif referred to by the learned Judges was the original transferee from the insolvent and Gharibia Bibi was the transferee

from Hanif and the learned Judges have indicated the methods by which the two transfers can be challenged.

13. It will also be seen from the decision of the Calcutta High Court referred to above that the challenge regarding the title of a transferee from the

transferee of an insolvent can be made only in proceedings u/s 4 of the Act.

14. Apart from the above cases cited at the bar, I may also refer to certain other decisions relevant to the point if question. In (Gunturu) Pullayya

and Another Vs. Official Receiver of Kistna and Others, , Ramesam and Madhavan Nair, 35 had to consider the question as to the effect of

setting aside a transfer by the insolvent u/s 53 on the transaction entered into by a transferee from the transferee. Though Mr. Justice Ramesam

attempted to distinguish the decisions in Ponnammai Ammal Vs. District Official Receiver and Another, to which the other learned Judge Mr.

Justice Madhavan Nair was a party, finally wound up by saying at page 274:

Even if it can be really said that later transactions by the transferees from the insolvent cannot be considered in a petition u/s 53 they cannot be

considered only on grounds peculiar and not as consequential on the main transaction. The point has been raised at a very late stage in this case

and it is purely technical. Even if Section 53 does not apply, we can declare such transactions void u/s 4 - see Bijadhar Ram Vs. Rajkaran Singh, .

But the other learned Judge Mr. Justice Madhavan Nair, referred to his previous decision in Ponnammai Ammal Vs. District Official Receiver and

Another, and observed as follows at page 275:

Though section 53 of the Act may not strictly apply, in a proper case I think the court has jurisdiction u/s 4 of the Insolvency Act to declare such

transactions invalid"".

Both the learned Judges ultimately proceed only on the basis that it is section 4 that has to be invoked in such cases.

15. In Abdul Rahim v Swaminatha Odayar (A.I.R. 1956 Mad. 19), Subba Rao and Panchapakesa Ayyer, JJ. felt that the observations of Mr.

Justice Ramesam in the case referred to earlier were rather wide. At page 84 of the reports, Mr. Justice Subba Rao, who delivered the leading

judgment, observes as follows:

The next question is whether section 53 can be invoked in the case of a transferee from the transferee"".

After posing this question, the learned Judge referred to the decision of the Allahabad High Court in Amir Ahmad Vs. Syed Hasan, and to the

decision of the Madras High Court in (Gunturu) Pullayya and Another Vs. Official Receiver of Kistna and Others, . After considering the scope of

those decisions, the learned Judge observes at page 25:

Though the observations of Ramesam, J, appear to be rather wide, what the learned Judges in effect stated was that if both the transactions are

part of a scheme of fraud and they are liable to be attacked on the same grounds, they could be set aside u/s 53 of the Act, or in any view u/s 4,

Provincial Insolvency Act. But they expressly made it clear that a transfer from a transferee cannot be set aside if the grounds for setting aside are

not connected with the earlier transaction.

It is not necessary to express our preference to either of the views expressed by the learned Judge of the Allahabad High Court or to the

observations made by the Judges of the Madras High Court, for in this case the transferee was not made a party to the application for setting aside

the alienation. It cannot he argued that though it may be permissible to set aside a transfer from a transferee prior to the application for adjudication

u/s 53, Provincial Insolvency Act, the transfer automatically falls to the ground even though the subsequent transferee is not made a party to the

application.

It is therefore clear that if a transfer is set aside u/s 53, Provincial Insolvency Act, it becomes ineffective only from the date of application for setting

it aside, and that it cannot affect the rights of transferees from the transferee prior to that date who were not made parties to the application. The

plaintiffs in the present case became tenants of Subramania under a lease deed dated 29-8-1932 for seven years. As they were not made parties

to the application their rights under the lease deed remain unaffected, for at the time the lease was executed Subramania had certainly the legal

competency to lease out the lands. The district Judge in his judgment says:

It has not been contended even for a moment nor is there anything in the material or recorded evidence to support the contention, that the plaintiffs

were not bona fide transferees for valuable consideration''.

16. Therefore, it will be seen from the latest judgment of the Madras High Court just now referred to, that even if a transfer"" by the insolvent is set

aside u/s 53 of the Act, it becomes effective only from the date of the application for setting aside and that it cannot affect the rights of transferees

from the transferee prior to that date who were not made parties to the application. The principle laid down by the learned Judges applies with

very great force to the matter before me; because the appellant purchased the property from the transferee of the insolvent on 16-12-1111, and

the Official Receiver files an application challenging the original transfer by the insolvent only on 20-4-1115 and the said transfer was set aside on

11-1-1116. Long before the filing of an application by the Official Receiver, the appellant, who is a transferee from the transferee of the insolvent,

has already obtained a valid title and he was not made a party even in the proceedings to set aside the original transfer. Further, it will be seen that

the learned Judges accepted the finding of the District Judge that the plaintiffs in that case, who were transferees from the transferee of the

insolvent, were bona fide transferees'' for valuable consideration and this also was taken into account by the learned Judges.

17. In this case, both the courts have proceeded on the basis that the appellant is a bona fide transferee for valuable consideration as will be seen

from their findings that the appellant discharged the liabilities on the property and also effected valuable improvements.. This is a conduct which is

only consistent with the appellant being a bona fide transferee for valuable consideration.

18. In Kanak Sunder Bibi Vs. Ram Lakhan Pandey and Others, , Das, C.J., and Ahmad, J. observed at page 468 as follows:

If the transfer in favour of Janki Kaharin is itself hit by S. 53, Insolvency Act, because of the absence of valuable consideration for it, there is no

reason to hold that the transfer in favour of Ramdeo Pandey is not equally hit by that section. I do not, however, mean to say that in no case a

purchaser from a transferee under a transfer made by the insolvent can in law sustain his title for the simple reason that the original transfer made by

the insolvent is itself hit by S. 53, Insolvency Act.

He may in certain circumstances defend his title on the equitable principle of being a purchaser for value without notice. That, however, is not the

case here nor any argument on that line was advanced by Mr. Roy. I therefore hold that that gift also was rightly annuled by the Insolvent Court.

Though this decision may appear to lay down that section 53 is applicable even in cases of subsequent transferee, still the learned Judges clearly

hold that such subsequent transferees may defend their title on equitable principle of being purchasers for value without notice. But in that case, the

learned Judges held that the subsequent transferee did not come under the said exception.

19. Reference may also be made to a recent decision of the Mysore High Court reported in Srikantiah Setty v Basha Seheb & Co. (A.I.R. 1958

Mys 35) of Somnath Iyer and Sadasivayya, JJ. The learned Judges seem to be of the view that section 53 of the Act will apply as is seen from the

following observations at page 40:

If the transfer to a transferee from the insolvent is declared invalid and not binding on the Official Receiver and if the latter transfer by the transferee

from the insolvent is held to form only a link in the chain of a fraudulent scheme to defraud the other creditors of the insolvent, the Insolvency Court

has, to my mind, clearly the power to annual the second transfer as not binding on the Official Receiver not only under S. 53 of the Act, but also, if

necessary, by the exercise of its powers under S. 4 of the Act. (vide Isamoddin Ajmoddin Vs. Ajmoddin Shamsoddin, ; Kandaswami Goundan

and Others Vs. Rangaswami Goundan and Others, ; and Amir Ahmad Vs. Syed Hasan, . In my opinion, the transfer in favour of respondent 5 was

also rightly annulled.

But it will be seen from their observations at page 41 that in that case, the court was not satisfied that the subsequent alienees were transferees in

good faith and for value. Further, there are observations at page 41 to show that it is section 4 of the Act that was in their mind as will be seen in

their observation;

Section 4 of the Insolvency Act gives very wide powers to the court.

20. I may also refer to the two decisions relied upon by the learned District Judge and they are Ata Mohammad v Mehr Chand (A.I.R. 1935 Lah.

368) decided by Addison and Din Mohammad, JJ., and in the matter of In Re: Girish Chandra Seal., decided by Mc Nair, J. In the first mentioned

case, the learned Judges of the Lahore High Court no doubt, observed at page 369:

We can find no reason for holding that a transferee from an insolvent can avoid the operation of section 53 by merely passing on the property to

some other person.

The learned Judges further purport to rely upon the decision of Mr. Justice Oldfield in Jagannatha Iyengar v Narayana Iyengar (52 Indian Cases

761). In fact, this decision of the Madras High Court has been referred to with approval in the later Division Bench judgment reported in

Ponnammai Ammal Vs. District Official Receiver and Another, referred to earlier. But the learned Judges of the Lahore High Court take the view

that the decision in Ponnammai Ammal Vs. District Official Receiver and Another, has been wrongly decided. With great respect to the Lahore

Judges, I am not able to agree with the reasoning of the decision in Ata Mohammad v Mehr Chand" (A.I.R. 1935 Lah. 368), if the said decision is

intended to lay down that a sale in favour of a transferee from the transferee of an insolvent can be annulled u/s 53 of the Act. In my view, the

decision in Ponnammai Ammal Vs. District Official Receiver and Another, lays down the correct law. But in any event, in the Lahore case, the

transferee from a transferee was also made a party and proceedings were taken with the said transferee on record not only u/s 53 but also u/s 4 of

the Act. In fact, the learned Judges of the Lahore High Court observed at page 369 as follows:

The original transfer made by the insolvent is voidable under S. 53 and if once It is declared void as against the Official Receiver, the subsequent

transfer by the transferee cannot stand and can be annulled under S. 4, Insolvency Act, if not technically under S.53.

These observations indicate to my mind that the learned Judges were not prepared to go to the extent of holding that such transfers as the present

one can be annulled u/s 53, because the learned Judges contemplate such an annulment only u/s 4 and the teamed Judges also further realise the

difficulty of applying section 53.

21. The second decision referred to by the learned District Judge namely, In the matter of In Re: Girish Chandra Seal., in my view, does not

support the proposition that section 53 is applicable to cases like the present. In the said decision, the learned Judge comes to a definite finding that

the original transfer by the insolvent itself is valid. The learned Judge observes at page 214:

On my finding that the transfers in favour of Gour were valid, it fallows that the title of Gour''s transferees is good and the other questions which

have been argued, do not arise.

Gour referred to in the said question, is the original transferee from the insolvent and that transaction itself was held to be good. Therefore, the

learned Judge had no further necessity to consider the validity of the transaction of the transferee from Gour. But nevertheless, the learned Judge

expresses the opinion later on:

Even if it is conceded that Umesh was a bona fide purchaser for consideration, he could acquire no title from Gour, if the transfers in favour of

Gour were in fact inoperative.

Umesh was the transferee from Gour who himself was the original transferee from the insolvent. The learned Judge had held the transfer in favour

of Gour to be valid and on that finding no further questions arise. After having held like that, the learned Judge nevertheless, makes an observation

that if the alienation in favour of Gour is not valid, a transferee from Gour will also get no title. With great respect to the learned Judge, these

observations were quite unnecessary for the disposal of that case and are only in the nature of an obiter dicta. Even if the learned Judge can be

considered to have given a decision on that point, with great respect, I am not able to accept the same. But this ruling need not detain me further,

as I have shown that those observations were not really necessary for a decision of the case before the learned Judge.

22. I may also refer to a decision of the Travancore-Cochin High Court reported in Kunhitti v Cheru (I.L.R. 1955 T.C. 764) a decision of the

learned Chief Justice and Mr. Justice Sankaran. The learned Chief Justice, who delivered the leading Judgment, observes at page 768 as follows:

In a proper case it may, however, be possible to protect a subsequent transfer, if it falls within the, purview of section 55 (c), Cochin Insolvency

Act - 55(c), Provincial Insolvency Act- vide judgments of Sir Lancelot Sanderson, C.J. and Sir Ashutos Mookerjee, J. in Lakshmi Priya Vasi v

Rani Kissori Dasi (34 I.C. 435 F.B.). With respect to transfers falling within the scope of section 53, there is, however, no express protection

clause and bona fide transfers can be saved only by invoking the aid of general principles, and certain English cases of which In re Hart Ex parte

Green (1912 - 3 - K.B. 6), would appear to be the most outstanding. A few Indian decisions discussing or following the rule of that decision may

usefully be mentioned; Mathukumalli Ramayya and Others Vs. Uppalapati Lakshmayya, ; The Official Receiver Vs. Muhammad Meera Saheb and

Another, ; and Amir Ahmad Vs. Syed Hasan,

It will be seen from the extract quoted above that the Travancore-Cochin High Court has approved of the decisions of the Madras High Court and

also the Allahabad High Court already referred to and discussed earlier by me in this judgment.

23. Therefore, from the decisions of the Madras, Allahabad and Travancore-Cochin High Courts referred to above, it follows that an alienation in

favour of a transferee from the transferee of an insolvent cannot be challenged by the Official Receiver u/s 53 of the Act. They can be challenged, if

at all only u/s 4 of the Provincial Insolvency Act and in order to make the decision binding, the transferee from the transferee must have been made

a party to those proceedings. In such proceedings, it is open to the transferee from the transferee to plead and establish that he is a bona fide

purchaser for value without notice of the insolvency proceedings. If he is able to establish that, the transaction in his favour will have to be upheld.

24. Mr. Kuruvilla invited my attention to a Full Bench decision of the Bombay High Court reported in Padamsi Premchand v Laxman Vishnu

Deshpande (A.I.R. 1949 Bom. 129 F.B.) decided by Chagla C, J. Bavdekar and Dixit JJ. That decision, in my opinion, does not in any way lay

down a proposition different from the one laid down by the decisions of the Madras, Allahabad and Travancore-Cochin High courts referred to by

me. The learned Judges only lay down that u/s 4 of the Provincial Insolvency Act the Insolvency Court has jurisdiction to decide questions of title

affecting strangers in cases which are not covered by section 53. That decision will not certainly help the contention of Mr. Kuruvilla that the

Official Receiver is entitled to challenge u/s 53 a sale in favour of a transferee from a transferee of an insolvent or that in a proper case it is not

open to such a transferee to defend his title by pleading that he has purchased in good faith and for value from the transferee of the insolvent. Nor

does the said decision lay down that once the original transfer by the insolvent is annulled u/s 53, the subsequent transfer by the original transferee

also falls to the ground automatically. I accept the findings of the two courts that the appellant is a bona fide transferee for value and without notice

of the insolvency proceedings from ""the original transferee of the insolvent. But I cannot accept the conclusions arrived at by the lower courts that

the sale in favour of the appellant cannot stand simply because the original sale by the insolvents to Koshy, the transferor of the appellant, has been

annulled in insolvency proceedings. That does not really affect the title of the appellant especially when admittedly no proceedings have been taken

by the Official Receiver u/s 4 of the Act as against the appellant.

In the result, the decrees and judgments of the two courts, to the extent that they are against the appellant, are set aside and the suit dismissed with

costs throughout. Leave to appeal granted.