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Appln. (I.P.) No.146 of 2015
in
I.P.No.14 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : **10.08.2023**

Pronounced on : **18.08.2023**

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Appln. (I.P.) No.146 of 2015
in
I.P.No.14 of 2012

The Official Assignee,
High Court, Madras - 600 104.

... Applicant

Vs.

1. Vasavi Communications,
Rep. by its Sole Proprietrix,
K.Narmadha

2. K.Rajeshwara Rao
3.KarthikaKarunakaran
4.K.Karunakaran

... Respondents

PRAYER: Application has been filed under Section 55 of the Presidency Town Insolvency Act, 1908 read with Order II Rule 1 of Insolvency Rules to set aside the sale in favour of the respondent Nos.3 and 4 under the sale deed dated 18.08.2011 registered as Document No.1752 of 2011, SRO Thyagaraya Nagar and declare the said sale null and void.



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For Petitioner : Mr.K.Harishankar

For Respondents : Mr.C.P.G. Yoganand
for R3 and R4

R1 and R2 - Set Ex-parte

ORDER

The issue that arises for consideration in this application filed by the Official Assignee under Section 55 of the Presidency Town Insolvency Act, 1909 (*Hereinafter referred to as "1909 Act"*) is whether the sale deed dated 18.08.2011 executed by the respondent Nos.1 and 2 (Insolvents) in favour of the respondent Nos.3 and 4 (purchasers) has been executed in "good faith" and "for valuable sale consideration".

2. The debtor petition in I.P.No.14 of 2012 was filed by the respondent Nos.1 and 2 on 14.02.2012 to declare themselves as insolvents. They were adjudicated as insolvents by this Court on their petition vide order dated 16.02.2012 and thereafter, they had filed their statements on 12.06.2012.



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3. According to the Official Assignee, the respondent Nos.1 and 2 (Insolvents) had disclosed in their statements to the Official Assignee that a residential property situated at No.4, Srinivas Apartments, Ground Floor, Sathulla Street, T.Nagar, Chennai (Hereinafter referred to as "**Property**") was sold by them in the year 2011 for a sum of Rs.40,00,000/- to the fourth respondent.

4. According to the Official Assignee, it was discovered, based on a valuation report, that the market value of the property as on 18.08.2011 was Rs.43,90,000/-. However, according to the Official Assignee, in the sale deed dated 18.08.2011, the property has been conveyed by the respondent Nos.1 and 2 (Insolvents) to the respondent Nos.3 and 4 (Purchasers) for a sum of Rs.15,83,200/-.

5. According to the Official Assignee, the sale which is less than two years prior to the date of adjudication is void and the transfer of property by the respondent Nos.1 and 2 (Insolvents) was not a transfer made in favour of the purchasers viz., the respondent Nos.3 and 4 in good faith and for



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valuable consideration.

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6. The respondent Nos.1 and 2 (Insolvents) have remained ex-parte in this application. The respondent Nos.3 and 4, who are the purchasers, have filed a counter to this application, denying the contentions of the applicant. They have contended that they are bonafide purchasers, having paid the valuable sale consideration for the purchase of the property from the insolvents. According to them, on the basis of the value of the building, the undivided share of the land, furniture, accessories, modular kitchen, AC, Television, 15 row cots made of teak wood, the valuable sale consideration payable to the insolvents was firmed up at Rs.50,50,000/-, which was the prevailing market rate and the sale agreement dated 18.02.2011 was entered into for the said price with the insolvents.

7. According to the respondent Nos.3 and 4 (Purchasers), the total sale consideration of Rs.50,50,000/- comprises of the following:

a) Rs.8,52,200/- was paid as sale consideration for the undivided share of the land;



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b) Rs.7,31,000/- was paid as sale consideration for the super built up area and the sale deed dated 18.08.2011 for Rs.15,83,200/- was executed by the respondent Nos.1 and 2 (Insolvents) in favour of the respondent Nos.3 and 4;

c) The balance sale consideration of Rs.34,66,800/- was paid by the respondent Nos.3 and 4 towards furnishings, fittings, electrical items, household appliances, etc., i.e., the movables in the said flat, which amount that was paid towards movables is not subject to stamp duty nor does the sale of the said movables require registration under law and hence, not required to be mentioned in the sale deed.

8. According to the respondent Nos.3 and 4 (purchasers), out of the aggregate sum of Rs.50,50,000/-, a sum of Rs.29,00,000/- was paid through crossed cheques and receipts obtained from the respondent Nos.1 and 2 (Insolvents). According to them, a sum of Rs.12,00,000/- was paid by cash against duly stamped receipt signed by the respondent Nos.1 and 2 (Insolvents) and another sum of Rs.8,44,188/- was paid by cheque to the credit of the loan account of the respondent Nos.1 and 2 (Insolvents) held



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with Indian Bank and the said loan was cleared in full and the said property was redeemed from the said mortgage before its purchase by the respondent Nos.3 and 4. Thus, according to the respondent Nos.3 and 4, for the sum of Rs.49,44,188/-, the respondent Nos.1 and 2 have issued duly signed payment receipts and / or acknowledgments to the respondent Nos.3 and 4.

9. According to the respondent Nos.3 and 4, upon receipt of the balance sale consideration of Rs.1,05,812/- by way of cash on the date of execution of the sale deed, the aforesaid sale deed dated 18.08.2011 was executed in favour of the respondent Nos.3 and 4 by the respondent Nos.1 and 2 (Insolvents).

10. It is contended by the respondent Nos.3 and 4 that after their purchase on 18.08.2011, they have mortgaged the property for a sum of Rs.20,00,000/- with Manipal Housing Finance Syndicate Limited on 29.06.2012 and the said mortgage is registered as document No.1408 of 2012 on the file of the SRO, T.Nagar, which mortgage is by deposit of title deeds and is subsisting as on this date.



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11. According to the respondent Nos.3 and 4, the respondent Nos.1 and 2 (Insolvents) in their statement to the Official Assignee have stated that the property was sold for a sum of Rs.40,00,000/- to the fourth respondent alone. According to them, there is no mention in the said statement about the 3rd respondent, who is the co-purchaser and is the daughter of the 4th respondent.

12. It is also contended by the respondent Nos.3 and 4 (Purchasers) that they were unaware of the impending / filing of the Insolvency Petitions by the respondent Nos.1 and 2 (Insolvents) and they are also not aware of the dues payable by the respondent Nos.1 and 2 (Insolvents) to various creditors. According to them, they have purchased the property in good faith and for valuable sale consideration from the respondent Nos.1 and 2 (Insolvents). According to them, this application is not maintainable as there is no averment that the respondent Nos.3 and 4 had colluded with the insolvents and that the respondent Nos.3 and 4 had notice or knowledge of the impending insolvency. According to them, without specific averments, no amount of arguments or evidence has any basis and as such, any



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evidence and arguments submitted on any aspect apart from the above pleading on "under valuation" has to be necessarily discarded.

13. Before the learned Master, on the side of the Official Assignee 7 documents were filed, which were marked as Exs.A1 to A7 and they are as follows:

<i>S.No.</i>	<i>Description of the Document</i>	<i>Ex.No.</i>
1	The sale deed dated 06.06.2002 executed by V.Nigila in favour of the Insolvents registered as Doc.No.1221 of 2002 at SRO, T.Nagar.	A1
2	The sale deed dated 18.08.2011 executed by the insolvents in favour of Karthika Karunakaran and K.Karunakaran (the respondent Nos.3 and 4) registered as Doc.No.1752 of 2011 at SRO, T.Nagar.	A2
3	Order of adjudication dated 16.02.2012 in I.P.No.14 of 2012 passed by this Court.	A3
4	Original Statement of one of the Insolvent K.Rajeswara Rao dated 12.06.2012, showing the date of signing of the insolvent K.Rajeswara Rao as 15.04.2014.	A4
5	Original Statement of one of the insolvent K.Narmada dated 12.06.2012, showing the date of	A5



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<i>S.No.</i>	<i>Description of the Document</i>	<i>Ex.No.</i>
	signing of the insolvent K.Narmada as 15.04.2014.	
6	Certified copy of Encumbrance Certificate dated 28.10.2014 for the period from 01.01.1987 to 27.10.2014 in respect of the property of the insolvents.	A6
7	Original Valuation Report dated 28.10.2014 in respect of the property of the insolvents.	A7

14. Two witnesses were examined on the side of the Official Assignee viz., S.K.Deva Arul, (P.W.1), working as the Section Officer in the office of the Official Assignee and one P.Anbarasan (P.W.2), the valuer, who had submitted the valuation report for the Official Assignee.

15. On the side of the the respondent Nos.3 and 4 (purchasers), 12 documents were filed which were marked as Exs.R1 to R12 and the details are as follows:

<i>S.No.</i>	<i>Date</i>	<i>Description of the Document</i>	<i>Ex.No.</i>
1	31.03.2001	Sale Deed bearing document No.1003 of 2001 executed by Dr.M.K.Srinivasan in favour of Nigila (Predecessor in title)	R1



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S.No.	Date	Description of the Document	Ex.No.
2	25.05.2002	Valuation Report issued by Er.V.Shanmugavel Govt. Regd. Valuer & Approved Valuer for Indian Bank for the said property	R2
3	18.02.2011	Sale Agreement executed between 1st and 2nd respondents and the 3rd respondent	R3
4	18.02.2011	Payment receipt for Rs.5,00,000/- issued by the 1st respondent in favour of the 4th respondent	R4
5	06.03.2011	Payment receipt for Rs.13,00,000/- issued by the 1st and 2nd respondents in favour of the 3rd respondent	R5
6	06.03.2011	Payment receipt for Rs.12,00,000/- issued by the 1st and 2nd respondents in favour of the 3rd respondent	R6
7	06.03.2011	Letter from the 1st and 2nd respondents to the Secretary, apartments Association in which the said property is situated	R7
8	01.06.2011	Loan Statement for the period from 01.04.2010 to 01.06.2011 issued by the Indian Bank, Kothawal Bazaar Branch to the 1st and 2nd respondents	R8
9	25.06.2011	Letter from the 1st respondent to the Manager, Indian Bank, Kothaval Bazaar Branch	R9
10	-	Payment receipt issued by 1st and 2nd respondent to 3rd respondent	R10



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<i>S.No.</i>	<i>Date</i>	<i>Description of the Document</i>	<i>Ex.No.</i>
11	29.03.2016	Statement of accounts for the period from 01.02.2011 to 31.08.2011 issued by the Royal Bank of Scotland, KRM Towers, 1 Harington Road, Chetpet to the 4th respondent	R11
12	11.07.2015	General Power of Attorney executed by 3rd respondent in favour of the 4th respondent bearing adjudication No.135 of 2015 before SRO, T.Nagar	R12

On the side of the respondent Nos.3 and 4, the respondent No.4 was examined as a witness (RW.1).

Submissions of the learned counsels:

16. Learned counsel for the Official Assignee would submit that as seen from Section 55 of the 1909 Act, it would reveal that a valid transfer has to be made in good faith and for valuable sale consideration and therefore, according to him, in the absence of one, the other fails too. According to him, if there is want of good faith, the fact that valuable consideration has passed, will not save the transaction. He has placed reliance for the said proposition on the Judgment of this Court in the case of



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RMPRMM Subramanian Chettiar Vs. Official Receiver, Tanjore reported
in ***1954 LW 173***.

17. According to the learned Official Assignee, eventhough the initial onus is on the Official Assignee to prove "lack of good faith" on the part of the insolvents / transferors, this initial onus is discharged by the Official Assignee by pleading and proving that the property was admittedly sold for a value far lesser than its actual worth. According to him, the entire circumstances of the sale and the conduct of the parties will have to be taken into account to decide as to the bonafides of the insolvents and the transferees at the time of the sale. In support of this contention, learned Official Assignee drew the attention of this Court to a Division Bench Judgment of this Court in the case of ***A.Paranjothi Vs. Official Assignee*** reported in ***1989 (2) LW 312***.

18. The learned Official Assignee drew the attention of this Court to the deposition of the fourth respondent (transferee). According to him, the transferees (the respondent Nos.3 and 4) admitted that the price stated in the



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sale deed is lower than the market value and that is the reason as to why they have sought to place reliance on the sale agreement dated 18.02.2011.

19. Learned counsel for the Official Assignee has raised objections to the sale agreement dated 18.02.2011 (Ex.R3). According to him, the respondent Nos.3 and 4 cannot place reliance on extraneous evidence other than the sale deed itself for proving payment of consideration in view of Sections 91 and 99 of the Indian Evidence Act. It is further contended that the sale deed and the sale agreement even if taken in entirety do not prove the payment of entire value of the sale, as certain cash payments were also relied upon by the respondent Nos.3 and 4.

20. According to the learned counsel for the Official Assignee, it is evident from the conduct of the transferees that they have not exercised due diligence as bonafide purchasers would do at the time of purchasing the property. He would submit that the demeanor of the transferees will not entitle them for any equitable reliefs.



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21. It is further contended by the learned counsel for the Official Assignee that once the initial onus of the Official Assignee as to the lack of bonafides on the part of the insolvents is discharged, the onus shifts to the transferees to plead and prove the good faith of the insolvents in executing the impugned transaction. According to him, neither the insolvents nor the transferees have produced any documentary or oral evidence, in order to show that the impugned sale transaction has been made in good faith, by the transferors / insolvents. Further, he would contend that there is total lack of pleadings as regards the good faith of the transferors / insolvents and in the absence of pleadings, any amount of evidence is of no use. For this proposition, he drew the attention of this Court to a Judgment of this Court in the case of *Vimala Ammal Vs. C.Suseela and Others* reported in *AIR 1991 MAD 209*.

22. Learned counsel for the Official Assignee, after referring to the sale agreement dated 18.02.2011 (Ex.R3) and the sale deed dated 18.08.2011 would submit that the value disclosed by the insolvents in their statement to the Official Assignee is at variance with the value disclosed



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both in the sale agreement as well as in the sale deed. He would further submit that no proof has been placed by the respondents to show that the entire sale consideration has been brought into account by the insolvents and thereby benefitted the creditors prior to the adjudication. Therefore, according to him, there is complete lack of good faith on the side of the insolvents.

23. Learned counsel for the Official Assignee would further submit that the act is a beneficial legislation enacted for the benefit of debtors, who are unable to pay their debts, by providing refuge from the clutches of their creditors and by laying down protective procedure for repayment of their debts. He would further submit that the act also protects creditors and commercial morality. In support of the said contention, he drew the attention of this Court to a decision of the Honourable Supreme Court in the case of *Bai Hira Devi and Others Vs. Official Assignee of Bombay* reported in *AIR 1958 (SC) 448*.



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24. Learned counsel for the Official Assignee would submit that to avail the benefits of the Act, the insolvents ought to prove their bonafides and good faith by furnishing substantial evidence of their conduct prior to the filing of the petition under the Act. According to him, the insolvents have not furnished any substantial proof to demonstrate, why the impugned sale was made at a price much lower than the market value at the time of sale. He also placed reliance on a Judgment of the Bombay High Court in the case of *The Official Assignee of Bombay (Vs.) M/s.Bagri Brothers* reported in **1972 (74) Bom.LR 634**. Relying upon the said Judgment, learned counsel for the Official Assignee would further submit that if the insolvents make the transfer with a view to delay and defeat the creditors, the said transfer is not made in good faith.

25. The learned counsel for the Official Assignee would submit that the manner in which the impugned sale has been made raises suspicion on the intention of the respondents. He would submit that the tranferees had admittedly paid a sum of Rs.12,00,000/- to the insolvents as cash payment towards the purchase of the said property, which is disallowed under Law.



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He places reliance upon Section 40A (3) of the Income Tax Act, 1961 which provides that where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank account or account payee bank draft, exceeds Rs.10,000/-, no deduction shall be allowed in respect of the said expenditure. Therefore, according to him, the alleged payment of Rs.12,00,000/- in cash by the transferees to the insolvents is not true and the documents filed by the respondents in support of the same are self serving documents and ought not to be considered by this Court. He would further submit that in any event, the document cannot also be admitted in evidence in view of Sections 91 and 99 of the Indian Evidence Act.

26. The learned counsel for the Official Assignee also contended that the submissions of the respondents that the impugned sale was not concluded for the price mentioned in the sale deed and that monies were paid by the transferees to the insolvents, subsequent to the sale, are completely concocted which will go to prove that the respondents have



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colluded to defraud the creditors of the insolvents. According to him, the respondent Nos.3 and 4 have obviously had financial dealings with the insolvents and making use of such intermittent and piecemeal payments have entered into a sale deed on 18.08.2011 for a price lower than the fair market value, thereby defeating the interest of the general body of the creditors. He would submit that since the sale deed dated 18.08.2011 is a registered document, no further extraneous evidence can be considered for assessing the value at which the impugned sale has been made as per Section 91 of the Indian Evidence Act, 1872. Therefore, according to him, the impugned sale had not been made for valuable consideration and is void in the eyes of law. According to him, in the case on hand, there are no pleadings and proof regarding good faith of the insolvents. Further he would submit that as regards valuable consideration, the sale has been executed for a far lesser value than the fair market value as apparent from the registered documents. Therefore, in the absence of both elements viz., the good faith and valuable consideration, he would submit that the respondent Nos.3 and 4 cannot claim benefit under Section 55 of the 1909 Act.



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27. Per contra, apart from reiterating the contents of the counter affidavit filed by the respondent Nos.3 and 4, learned counsel for the respondent Nos.3 and 4 (purchasers) would submit as follows:

a) There is no averment in the petition filed by the Official Assignee that the respondent Nos.3 and 4 are in collusion with the insolvents and that they had notice or knowledge of the impending insolvency of the respondent Nos.1 and 2;

b) Without specific averments, no amount of arguments or evidence has any basis and as such, any evidence and arguments submitted on any aspect apart from the above pleading on "undervaluation" has to be necessarily discarded. While so, once it is shown by the respondent Nos.3 and 4, the sale deed (Ex.A2) was not undervalued and that the same was executed at market rates, the sale in favour of respondent Nos.3 and 4 has to be construed as made in good faith and for valuable consideration;

c) The respondent Nos.3 and 4 stand protected as 'bonafide purchasers' in accordance with Section 55 and 57 of the 1909 Act;

d) Admittedly, the respondent Nos.3 and 4 are strangers to the



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respondent Nos.1 and 2 and there was no plausible or justifiable reason for these respondents to expect or foresee the respondent Nos.1 and 2 to file for insolvency and being adjudged so nor did the respondent Nos.3 and 4 had any notice or knowledge of the impending insolvency at the time of the purchase of the said property. The Official Assignee has also not pleaded otherwise anywhere in this application;

e) The respective sale consideration for the undivided share of land at Rs.8,52,200/-, the super built up at Rs.7,31,000/- as covered under the sale deed Annexure 1-A (Ex.A2) furnishings, fittings, etc., that is, the movables at Rs.34,66,800/- was negotiated and mutually fixed at the market rates prevalent at the time of sale by the parties and was agreed to be received by the willing sellers (respondent Nos.1 and 2) as valuable consideration from the willing purchasers (respondent Nos.3 and 4) who paid the respective amounts;

f) The valuation report (Ex.A7) is whimsical, arbitrary, baseless and cannot be the yardstick for the valuation of the property and ought not to be relied upon for the following reasons:

i. From the deposition of PW.2 in his cross examination held



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on 29.08.2019 it is seen that PW.2 has clearly admitted that the valuation of the property as given in his valuation report (Ex.A7) has no basis, that is, his valuation is neither based on Government fixed value for land and building nor based on any sample sale deed in respect of a similar property in the same area / street;

ii. The so called expert, PW.2 has not valued the undivided share of land and the value of the super structure built up area specifically in his report nor was he able to give the respective market value for the undivided share of land / building, during his cross examination on 29.08.2019, as seen from his deposition;

iii. No sample sale deed to substantiate the composite market value both for the undivided share of land and the building at Rs.6,000/- per sq.ft. at which rate PW.2 has valued the property is filed on the applicant's side to substantiate his valuation in the manner known to law, thus leaving the report without any basis whatsoever;

iv. PW.2 admitted in his cross examination on 29.08.2019 that the Government's guideline value for the land is Rs.2,000/- per sq.ft. as on the date of sale (i.e., on 18.08.2011) and that he was not aware of the



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Government fixed PWD rate for the cost of construction as on the date of sale, though he was well aware that the said rates are periodically revised and fixed by the Government as per market rates in consultation with all stake holders;

v. Rs.2,000/- per sq.ft. is also the market value as assessed by the willing sellers (respondent Nos.1 and 2) and the willing purchasers (respondent Nos.3 and 4) and mentioned so in Annexure 1-A of Ex.A2 sale deed as sale consideration for the undivided share of land that the building stood valued by the respondents at Rs.1,000/- per sq.ft. in Annexure 1-A of Ex.A2 which was the prevalent cost of construction of building in the year 2011. While so, PW.2 has not given any justifying reason or basis anywhere in his valuation report (Ex.A7) or in his proof affidavit or during his cross examination for fixing the composite value of the property at Rs.6,000/- per sq.ft.;

vi. The valuation report (Ex.A7) has been prepared by PW.2 exorbitantly valuing the property arbitrarily and whimsically as required by the applicant (Official Assignee) without following any norms or guidelines.



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g) The learned counsel for the respondent Nos.3 and 4 would submit that though the sale deed (Ex.A2) does not state the mode and manner of passing of consideration at Rs.15,83,200/-, the receipts (Exs.R4 to R6 and R10) which would cover the said amount along with the balance sum of Rs.34,66,800/- towards sale consideration for movables clearly show that valuable sale consideration at market value mutually agreed upon by the parties has been paid by the respondent Nos.3 and 4 and received and encashed by the respondent Nos.1 and 2. He would further submit that in any case it is not the applicant's case that the respondent Nos.1 and 2 have not received the aforesaid sum of Rs.15,83,200/- towards the sale consideration for the undivided share of land and building, but only that the said sale under Ex.A2 is allegedly undervalued. According to him, the valuation report (Ex.A7) has no basis for want of substantive evidence vide any sample sale deed pertaining to the same street or area, there is no reason or basis to question or doubt the aforesaid sale value as mutually agreed upon between the respondents under Ex.A2, sale deed, which according to him, is on par with the Government fixed rates.



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h) The learned counsel for the respondent Nos.3 and 4 also drew the attention of this Court to the deposition of PW.1 and would submit that as seen from his cross examination, all the cheque payments made by the respondent Nos.3 and 4 to the respondent Nos.1 and 2 were clearly admitted as received and that the said witness added that the investigation is still pending in that regard. Therefore, he would submit that it is clear that the present application was filed prematurely and if the investigation was allowed to be completed and the bank statements of the respondent Nos.1 and 2 were obtained from the respective banks, the applicant would have seen that all the payments made by the respondent Nos.3 and 4 were duly received by the respondent Nos.1 and 2 and there could have been no reason for the applicant to file the present application.

i) The learned counsel for the respondent Nos.3 and 4 would further submit that the respondent Nos.3 and 4 have proved through Ex.R11 that all the cheques given in favour of the respondent Nos.1 and 2 were duly cleared and the cash payment of Rs.12,00,000/- stands acknowledged under



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Ex.R6 (receipt).

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28. With regard to the "good faith" test, learned counsel for the respondent Nos.3 and 4 would submit as follows:

a) As seen from the deposition of RW.1 in his cross examination held on 18.11.2021, the respondent No.3 is the daughter of the fourth respondent and she is studying in the United States of America. At the time of purchase of the said property by the respondent Nos.3 and 4, she was staying in Chennai and she is a software professional and she is presently working in Master Cards, United States of America. At the time of purchase of the property in the year 2011, the respondent No.3 was working as a software professional in Infosys. The fourth respondent, who deposed as RW.1 was earlier working in BSNL and has now retired. The entire sale consideration for purchase of the property was paid jointly by respondent Nos.3 and 4. These respondents came to know of the respondent Nos.1 and 2 and that the property was available for sale through a broker, just before the purchase of property i.e., 10 days prior to the execution of the sale agreement (Ex.R3). Since the property was mortgaged with Indian Bank, the respondent Nos.3



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and 4 proceeded on the premise that there would not be any encumbrance over the property and that too only on the verification of the photocopies of the documents, since the originals were with Indian Bank, the respondent Nos.3 and 4 entered into the sale agreement (Ex.R3) with the respondent Nos.1 and 2. RW.1 has deposed in his cross examination that Rs.12,00,000/- cash payment under Ex.R6 was made by him to the respondent Nos.1 and 2 from and out of the G.P.F. amounts received by him and from the savings of his daughter, the respondent No.3;

b) The initial onus is on the applicant to prove the lack of good faith on the part of the respondent Nos.1 and 2 (Insolvents). This initial burden, the applicant will need to plead and necessarily prove in a manner known to law. In the present case, to prove that the sale deed dated 18.08.2011 (Ex.A2) was allegedly undervalued, the only document that is pressed into service to prove the alleged undervaluation is Ex.A7, valuation report, which is arbitrary, whimsical, fanciful and baseless for want of a sample sale deed and a justifiable basis to substantiate the composite market value. The Valuer (PW.2) is not an independent expert and only at the instance of



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and 4 would submit that the respondent Nos.3 and 4 have not let in any evidence, oral or documentary in variance with the registered sale deed (Ex.A2) for the market value of Rs.15,83,200/- and hence, Section 91, 92 and 99 of the Indian Evidence Act, 1872 have no applicability to the case on hand.

31. With regard to the collusion angle, submitted by the learned counsel for the applicant, the learned counsel for the respondent Nos.3 and 4 would submit that the signature of the respondent Nos.1 and 2 in Exs.R4 to R6 and R10 qua the sale deed (Ex.A2) has been categorically admitted by the applicant and that even if there is a recording of deposition contrary to this stated position, this stated position as recorded shall prevail as per the orders of this Court passed on 14.02.2022 in Application No.103 of 2021, which order has become final and binding on both the parties. Admitting the signature is admitting the execution of the aforesaid documents vide Exs.R4 to R6 and R10, which includes the cash receipt for Rs.12,00,000/- (Ex.R6).



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32. According to the learned counsel for the respondent Nos.3 and 4, under Section 102 of the Indian Evidence Act, 1872, the burden of proof is entirely on the applicant to prove that the alleged collusion with the insolvents which aspect of collusion has not been pleaded anywhere in the application but was submitted and recorded in the aforesaid order of this Court dated 14.02.2022 and also the line of cross examination of RW.2 was suggested as the aspect of "collusion". He would further submit that it is settled law that without specific averments, no amount of argument or evidence has any basis and as such, any evidence or argument submitted on any aspect apart from the alleged pleading of the lack of good faith for the specific reason of alleged "undervaluation" has to be necessarily discarded.

33. The learned counsel for the respondent Nos.3 and 4 would submit that the authorities relied upon by the learned counsel for the applicant are not applicable to the facts of the present case. According to him, it is clear that ;

a) The sale made by the respondent Nos.1 and 2 in favour of the



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respondent Nos.3 and 4 is a bonafide sale;

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b) The respondent Nos.3 and 4 are strangers to the respondent Nos.1 and 2;

c) The sale was made in "good faith" and "for valuable sale consideration" and hence, the respondent Nos.3 and 4 stand protected as "bonafide purchasers" in accordance with Sections 55 and 57 of the 1909 Act. Therefore, the learned counsel for the respondent Nos.3 and 4, seeks for dismissal of this application filed under Section 55 of the 1909 Act by the Official Assignee.

Discussion:

34. The decision in this application revolves upon the meaning of two terms viz., "Good Faith" and "Valuable Sale Consideration". This Court will have to ascertain whether the sale effected by the respondent Nos.1 and 2 (Insolvents) in favour of the respondent Nos.3 and 4 is hit by Section 55 of the 1909 Act, which reads as follows:

"55. Any transfer of property, not being a transfer made before and in consideration of marriage,



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or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, shall, if the transferor is adjudged insolvent within two years after the date of the transfer, be void against the official assignee."

35. Both "Good Faith" and "Valuable Sale Consideration" have not been defined in the Presidency Towns Insolvency Act, 1909 . "Good Faith" is defined under the General Clauses Act. The definition available in the General Clauses Act can be imported if there is no definition available in the 1909 Act. Section 3 (22) of the General Clauses Act defines "Good Faith" as " a thing shall be deemed to be done in “good faith” where it is infact done honestly, whether it is done negligently or not;

36. From the aforesaid definition, it is clear that even if an act is done negligently, but, honestly, the said act is deemed to be done in good faith. In the case on hand, admittedly, the sale consideration disclosed in the impugned sale deed is more than the Government guideline value. The plea



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taken by the applicant (Official Assignee) is that the sale deed has been undervalued and that the respondent No.3 and 4 have purchased the property for a price lesser than the fair market value prevalent at the time of the sale.

37. Admittedly, the property was mortgaged with Indian Bank prior to the purchase of the same by the respondent Nos.3 and 4 from the insolvents. It is also an admitted fact that the respondent Nos.3 and 4 had discharged the mortgage of the insolvents with Indian Bank by paying the dues prior to the date of the impugned sale deed. Having discharged the mortgage, created by the insolvents prior to the date of the impugned sale deed, obviously, there would have been an agreement of sale between the insolvents and the respondent No.3 and 4.

38. The agreement of sale dated 18.02.2011 (Ex.R3) has also been produced by the respondent Nos.3 and 4, which will reveal that the total sale consideration for the undivided share of land, building and the amenities is Rs.50,50,000/-. The respondent Nos.3 and 4 have also produced



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documentary evidence in the form of a bank statement to prove that a sum in excess of the sale deed value was credited to the account of the insolvents prior to the date of the impugned sale deed, which was paid toward the sale consideration of the property which is the subject matter of dispute.

39. The respondent Nos.3 and 4 have categorically pleaded that excepting for the subject transaction, they had no previous relationship with the insolvents. They have also categorically pleaded that they never had prior knowledge that the insolvents are indebted to various creditors and that they are proposing to file an insolvency petition to declare themselves as insolvents.

40. It is settled law as per the provisions of Sections 101 to 105 of the Indian Evidence Act that the initial burden of proof is on the person, who is seeking a particular relief from the Court. Sections 101 to 105 of the Indian Evidence Act also applies to insolvency petitions. Therefore, the Official Assignee, who claims that the impugned sale deed has to be declared as void as per the provisions of Section 55 of the 1909 Act, has to first



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discharge his initial burden through oral and documentary evidence, that the respondent Nos.3 and 4 have purchased the property under the impugned sale deed without good faith and by not paying the fair market value of the property.

41. Subsequent to the purchase under the impugned sale deed, the respondent Nos.3 and 4 have once again mortgaged the property with Manipal Housing Finance Syndicate Limited and had availed housing loan, which is also not disputed by the applicant (Official Assignee). A categorical assertion has also been made by the respondent Nos.3 and 4, as seen from the evidence available on record, that the value disclosed in the sale deed covers only the undivided share of land and the building, but, does not cover the other amenities and movables, which are part of the sale as per the agreement of sale dated 18.02.2011 (Ex.R3). Excepting for the sum of Rs.13,05,812/- which was paid in the form of cash by the respondent Nos.3 and 4 out of the total sale consideration of Rs.50,50,000/-, the balance payments were made by the respondent Nos.3 and 4 to the insolvents only through cheques. The encashment of those cheques totally valued at



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Rs.37,44,188/- is also proved by the respondent Nos.3 and 4 through the bank statement (Ex.R8) which has also been admitted by PW.1, the witness of the applicant, during the course of his cross examination. Out of the cash payment of Rs.13,05,812/-, the respondent Nos.3 and 4 have also produced receipts issued by the insolvents dated 06.03.2011 (Ex.R6) for a sum of Rs.12,00,000/-. Only for a sum of Rs.1,05,812/-, there is no receipt produced by the respondent Nos.3 and 4. But, they have contended that the said payment of Rs.1,05,812/- was paid on the date of registration of the impugned sale deed to the insolvents.

42. The impugned sale deed does not disclose in the Annexure 1-A, accompanying it, which is required to be annexed as per the Indian Stamp Rules, the movables which the respondent Nos.3 and 4 claim to be part of the sale as per the agreement of sale dated 18.02.2011 (Ex.R3) entered into between the respondent Nos.3 and 4 and the insolvents, wherein the total sale consideration was fixed at Rs.50,50,000/-. There are 13 movable items. There is no requirement for registration when a categorical assertion has been made by the respondent Nos.3 and 4 that the movables lying in the



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property were also part of the sale for which separate valuation was done. It is for the Official Assignee to disprove the same by letting in further oral and documentary evidence to disprove the contentions of the respondent Nos.3 and 4 that apart from the undivided share of land and building which is disclosed in the impugned sale deed, there was sale in respect of the movables lying in the property of the insolvents which was valued at Rs.34,66,800/-.

43. Excepting for examining the Section Officer, working in the Official Assignee's office (PW.1) and examining the valuer engaged by the Official Assignee (PW.2), who is not an independent valuer, no evidence has been let in to disprove the contentions of the respondent Nos.3 and 4 that the sale deed executed by the insolvents in favour of the respondent Nos.3 and 4 was a composite sale which include the movables lying in the insolvents' property. The respondent No.3 is the daughter of the respondent No.4. It is also not disputed that the respondent No.3 is a software professional and the respondent No.4, her father, is an ex-employee of BSNL.



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44. The respondent Nos.3 and 4 have categorically pleaded that they had no connection whatsoever with the insolvents, prior to their desire to purchase the property from the respondent Nos.1 and 2. They have also pleaded that they came to know that the properties were offered for sale only through a broker. It is also seen from the deposition of RW.1 (the respondent No.4), that he came to know about the sale only 10 days prior to the finalization of the agreement of sale dated 18.02.2011 (Ex.R3). No contra evidence has been produced by the Official Assignee to disprove the contentions of the respondent Nos.3 and 4. Whatever evidence placed on record by the Official Assignee in this proceeding, will not enable this Court to come to the conclusion that the impugned sale deed is a collusive transaction between the insolvents and the respondent Nos.3 and 4 and that the said transaction is hit by Section 55 of the 1909 Act, on the ground that the respondent Nos.3 and 4 had purchased the property without good faith and without valuable payment of sale consideration.



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45. Even assuming the valuation report dated 25.05.2002 (Ex.R2) submitted by the valuer (PW.2), appointed by the Official Assignee, is found to be correct, the sale consideration paid by the respondent Nos.3 and 4 as per the agreement of sale dated 18.02.2011 (Ex.R3) exceeds the valuation price. When there is no contra evidence to disprove the contention of the respondent Nos.3 and 4, that the sale is a composite sale, comprising of not alone the undivided share of land and building, but, also comprises of movables lying in the premises of the petitioner, the statement of the respondent Nos.3 and 4 has to be believed by this Court.

46. The initial burden of proof is upon the Official Assignee as per the provisions of Sections 101 to 105 of the Indian Evidence Act. The Official Assignee has failed to discharge his initial burden. The definition of "good faith" under Section 3 (22) of the General Clauses Act also makes it clear that even if the transaction was done negligently, but, honestly, the said transaction is deemed to be done in good faith.



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47. The encumbrance certificate will also not reveal the pendency of any insolvency proceedings. Earlier, the property was mortgaged with Indian Bank by the insolvents. The original title deeds pertaining to the property was also in the custody of Indian Bank. The respondent Nos.3 and 4 have admittedly discharged the mortgage with Indian Bank and have obtained the custody of the original title deeds prior to the date of the impugned sale deed. The property, being mortgaged with a nationalized bank, prior to the purchase of the property by the respondent Nos.3 and 4, any normal buyer would have been under the impression that the property is not subject to any litigation or the sellers are desiring to declare themselves as insolvents, in view of their inability to pay the debts to several creditors. No evidence has also been placed on record to prove that the respondent Nos.3 and 4 had the knowledge about the indebtedness of the respondent Nos.1 and 2, prior to the purchase of the property under the impugned sale deed.

48. The respondent Nos.1 and 2 (Insolvents) have also remained unrepresented in this application, despite service of notice on them. Therefore,



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it is clear that the respondent Nos.3 and 4 had purchased the property of the insolvents prior to the adjudication order, only on the "good faith" that the property conveyed to them does not suffer from any encumbrance. When the respondent Nos.3 and 4 had produced the agreement of sale which discloses that the total sale consideration as Rs.50,50,000/- and out of the total sale consideration, a sum of Rs.37,44,188/- has also been paid by the respondent Nos.3 and 4 by way of cheques for which proof has also been filed in the form of Exs.R4, R5 and R10, this Court cannot disbelieve the statements made by the respondent Nos.3 and 4. Even for the sum of Rs.12,00,000/- paid by cash, the respondent Nos.3 and 4 have produced proof in the form of receipt marked as Ex.R6. In respect of the balance payment of Rs.1,05,812/-, the respondent Nos.3 and 4 have contended that the said payment was made to the insolvents by cash on the date of registration of the impugned sale deed dated 18.08.2011 (Ex.A2) .

49. If there is any violation of the provisions of the Income Tax Act by the respondent Nos.3 and 4 on account of payment of huge sums of money through cash, they will have to face the legal consequences as per



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the provisions of the Income Tax Act. But, that cannot be a ground for attracting Section 55 of the 1909 Act, as the respondent Nos.3 and 4 have satisfied the twin conditions

- a) "Good Faith";
- b) "Payment of valuable consideration",

which is the only requirement to be satisfied under the provisions of Section 55 of the 1909 Act.

50. Whether the transferee had acted in good faith depends upon the facts and circumstances of each case. In the decisions relied upon by the learned counsel for the Official Assignee, it was proved that there was lack of good faith on the part of the transferee. The facts of the decisions relied upon by the learned counsel for the Official Assignee are totally different from the facts of the instant case.

a) In the case of ***Subramanian Chettiar Vs. Official Receiver, W.Tanjore*** reported in ***54 LW 173***, the insolvents and his fellow conspirators had transacted and acted merely with the object of putting the property beyond the reach of the son for the benefit of his father's mistress;



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b) In the case of ***Bai Hira Devi and Others Vs. Official Assignee of Bombay*** reported in ***AIR 1958 (SC) 448***, that a deed of gift has been executed by the insolvent in favour of his wife and three sons and they contended that though the document purported to be a gift, it was really a transaction supported by valuable consideration and as such it did not fall within the mischief of Section 55 of the 1909 Act;

c) In the case of ***The Official Assignee of Bombay (Vs.) M/s.Bagri Brothers*** reported in ***1972 (74) Bom.LR 634***, the debtor transferred his two businesses to the Company promoted by him to contend that the Company was a legal entity and whatever might have been the intent of the debtor, it cannot be attributed to the Company and that therefore, so far as the Company was concerned, the transfer was perfectly bonafide and for valuable consideration;

d) In the case of ***Vimala Ammal Vs. C.Suseela and Others*** reported in ***AIR 1991 MAD 209***, the said decision was not involving Section 55 of the 1909 Act, but, it was dealing with a Suit for specific performance. Further in that case, the purchaser did not plead that she had paid the entire sale consideration and also did not take a plea that she had purchased the



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property in good faith without notice of the prior sale agreement. In the case on hand, the facts are totally different, where the purchasers (the respondent Nos.3 and 4) have taken a specific plea that the property was purchased in good faith and for valuable sale consideration;

e) In the case of *A.Paranjothi Vs. Official Assignee* reported in **1989 (2) LW 312**, the facts of the case are that the insolvents create an equitable mortgage on the eve of adjudication of insolvency, just 54 days prior to the filing of the petition for adjudication as an insolvent and the said mortgage was in favour of none else than the co-brother of the mortgagor. In the case on hand, the facts are totally different as the the respondent Nos.3 and 4 were, admittedly, strangers to the insolvents, prior to the date of the impugned sale.

51. Sections 91, 92 and 99 of the Indian Evidence Act, which was relied upon by the learned counsel for the Official Assignee has no applicability to the facts of the instant case, since the respondent Nos.3 and 4 has not let in any evidence, orally or documentary, which is in variance



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with the impugned sale deed (Ex.A2). A categorical assertion has been made by the respondent Nos.3 and 4, as seen from their counter affidavit, that they are bonafide purchasers, having purchased the property from the insolvents in good faith and for valuable sale consideration without being aware about the indebtedness of the insolvents and without being aware that the respondent Nos.1 and 2 are likely to file an insolvency petition under the 1909 Act to declare themselves as insolvents. The respondent Nos.3 and 4 have also filed documentary evidence before this Court in the form of sale deed, sale agreement and receipts viz., (Exs.A2, R3, R4 to R6 and R10) to establish that they are bonafide purchasers, having purchased the property from the insolvents under good faith by paying valuable sale consideration. The sale agreement dated 18.02.2011 (Ex.R3) disclosed that the property including other movable items were purchased by the respondent Nos.3 and 4 for a total sale consideration of Rs.50,50,000/-. Towards payment of the sale consideration, the respondent Nos.3 and 4 have also produced documentary evidence, excepting for a sum of Rs.1,05,812/- towards the balance sale consideration, which was paid on the date of registration of the sale deed (Ex.A2). No contra evidence has been produced by the Official



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Assignee to disprove the contentions of the respondent Nos.3 and 4. The respondent No.3 is the daughter and the respondent No.4 is her father. The respondent No.3 is working as a software professional and the respondent No.4, her father, is a retired BSNL employee. No evidence has also been produced by the Official Assignee to show that the respondent Nos.3 and 4 had prior relationship with the insolvents and they were aware of any imminent threat of respondent Nos.1 and 2 being adjudicated as insolvents.

52. Right to property is a constitutional right. In an application filed under Section 55 of the 1909 Act, the benefit of doubt should always be given to the purchasers. Suspicious circumstances, surrounding the execution of the document, are alone not sufficient for the purpose of proving that the purchasers had purchased the property from the insolvents without good faith and without payment of valuable sale consideration. It is for the Official Assignee to prove, through clinching, oral and documentary evidence, that the purchasers have purchased the property from the insolvents without good faith and without payment of valuable sale consideration. In the case on hand, the Official Assignee has not produced



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any independent documentary evidence in the form of data sale deed corresponding to the area of the property purchased by the respondent Nos.3 and 4 under the impugned sale deed. Only based on conjectures and surmises, the Official Assignee has filed this application under Section 55 of the 1909 Act to declare the impugned sale deed as "null and void".

53. For the foregoing reasons, this Court does not find any merit in this application filed by the Official Assignee and it is dismissed. The Official Assignee is directed to communicate this order to the Registration Department to remove the encumbrance reflected in the Encumbrance Certificate for the subject property, within a period of one week from the date of receipt of a copy of this order. No Costs.

18.08.2023

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No
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ABDUL QUDDHOSE. J.,

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**Pre-delivery Order in
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