

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

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C.M.S.A.No.13 of 2015

Between:

Mareboyina Balaiah and another

.. Appellants

and

Boddu Rami Reddy and 5 others

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 17.7.2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be
marked to Law Reporters/Journals? Yes/No

3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? Yes/No

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.M.S.A.No.13 of 2015

JUDGMENT:

The respondents in I.P.No.48 of 2005 on the file of the Senior Civil Judge, Markapur, Prakasam District preferred this appeal against the judgment and decree, dated 4.6.2012, in A.S.No.57 of 2010 on the file of the Principal District Judge, Ongole, whereby appellant No.1 herein was adjudged as insolvent while annulling the sale deeds executed in favour of appellant No.2 herein, which were marked as Exs.P-2 and P-3.

2. For the sake of convenience, the ranks given in I.P.No.48 of 2005 before the Senior Civil Judge, Markapur will be adopted throughout the judgment.

3. The petitioners, who are the creditors, filed petition under Section 9 of the Provincial Insolvency Act, 1920 (for short, "the Act") to adjudge respondent No.1 as an insolvent and to annul the sale deeds marked under Exs.P-2 and P-3 alleging that respondent No.1 borrowed an amount of Rs.30,000/- from petitioner No.1 on 27.12.2004 agreeing to repay the same with interest at 24% p.a. either to petitioner No.1 or to his order. Similarly, respondent No.1 borrowed amounts from petitioner Nos.2 to 6 on various dates and executed pronotes with similar terms and conditions. The total face value of the pronotes executed by respondent No.1 in favour of the petitioners is to a tune of Rs.2,02,200/-. Despite demands by the petitioners, respondent No.1 did not discharge the debt due. While the matter stood thus, respondent No.1 executed registered sale deed, dated 26.5.2005, in favour of respondent No.2 in respect of the first item of the schedule property. Again, on 2.6.2005, respondent No.1 transferred the second item of the schedule property in favour of respondent No.2, who is no other than his own son-in-law. The two sale deeds are for no consideration and they are executed nominally to screen away his properties in the name of respondent No.2 to defeat and delay the

debts to the petitioners. Hence, the petitioners/creditors filed the insolvency petition to adjudge respondent No.1 as an insolvent and to vest his properties with Official Receiver for maintenance and also for ratable distribution among creditors.

4. Respondent No.1 filed counter admitting the relationship of debtor and creditor between himself and the petitioners while contending that he borrowed Rs.5,000/- only from petitioner No.6 but not Rs.50,000/- on 28.11.2004 and that the alleged pronote is a fabricated one. He further contended that he is unable to discharge his debts due to heavy loss in agriculture and therefore, he filed I.P.No.30 of 2005 to adjudicate him as an insolvent. Similarly, he contended that due to pressure of respondent No.2, he executed the sale deeds – Exs.P-2 and P-3 and that there is no collusion between them, and therefore, he cannot be adjudged as an insolvent and prayed to dismiss the petition.

5. Respondent No.2 filed counter in similar lines of respondent No.1 while denying the contention of the petitioners that the sale deeds – Exs.P-2 and P-3 are nominal and contended that he is a *bona fide* purchaser of item Nos.1 and 2 of schedule property under Exs.P-2 and P-3 and that respondent No.1 did not commit any act of insolvency and prayed for dismissal of the petition.

6. During the course of enquiry, P.Ws.1 to 5 were examined and Exs.P-1 to P-13 were got marked. On behalf of the respondents, R.Ws.1 to 6 were examined and got marked Exs.R-1 to R-4.

7. Upon hearing argument of the learned counsel appearing on both sides, the learned Senior Civil Judge, Markapur adjudged respondent No.1 as an insolvent while directing to vest the properties of respondent No.1 with the Official Receiver, Ongole.

8. Aggrieved by the said order and decretal order, respondent

Nos.1 and 2 filed A.S.No.57 of 2010 on the file of the Principal District Judge, Ongole and the same ended in dismissal by order, dated 4.6.2012 confirming the order, dated 30.11.2009, in I.P.No.48 of 2005 passed by the Senior Civil Judge, Markapur.

9. Aggrieved by the judgment and decree in A.S.No.57 of 2010, the present appeal is filed raising several contentions, but without disclosing any substantial question of law except contending that the trial Court did not consider the principle laid down in **G.Satyavathi v. Jampana Venkata Satya Narayana Raju and others**^[1]. Basing on the substantial question of law referred in para No.5 of the Grounds of Appeal, now, the point that arises for consideration is:

“Whether respondent No.1 is able to discharge the debt due, if any, to the petitioners and whether respondent No.1 can be adjudged as an insolvent?”

10. **POINTS:-** The trial Court and the appellate Court recorded a finding that respondent No.1 committed an act of insolvency within the meaning of Section 6(1)(b) of the Act, as respondent No.1 transferred item Nos.1 and 2 of the schedule property by executing originals of Exs.P-2 and P-3 in favour of respondent No.2, having failed to discharge the debt due to the petitioners, who are the creditors.

11. The sole ground urged before this Court is that respondent No.1 is able to discharge the debt due to the petitioners/creditors. In the entire counter filed by respondent No.1, he did not raise any specific plea about his ability to discharge the debt due to the petitioners and on the other hand, he himself filed I.P.No.30 of 2005 to adjudge him as an insolvent, as the debts far exceeded the value of properties he possessed and unable to discharge the debt. Filing of insolvency petition by a debtor itself is an act of insolvency under Section 6 of the Act. However, the counter filed by respondent No.1 is totally silent as to his ability to discharge his debts. On the other hand, the plea raised

12. Accordingly, the Civil Miscellaneous Second Appeal is dismissed at the stage of admission. There shall be no order as to costs. Miscellaneous Petitions pending, if any, in this appeal shall stand closed.

Date: 17.7.2015
AMD

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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DATE: 17.7.2015

AMD

[\[1\]](#) 2011(4) ALD 376 (DB)