

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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C.M.S.A.No. 3 OF 2010

JUDGMENT:

The 2nd respondent in A.S.No. 102 of 2008 on the file of the Court of I Additional District Judge, Nellore (for short, 'the Appellate Court'), preferred the present appeal challenging the decree and judgment dated 26-11-2009, whereunder the decree and decretal order dated 16-07-2008 passed in I.P.No. 16 of 2006 on the file of the Court of Senior Civil Judge, Parchur (for short, 'the trial Court'), was reversed allowing the petition in I.P.No. 16 of 2006.

2. For convenience of reference, the ranks given to the parties in I.P.No. 16 of 2006 before the trial Court will be adopted throughout this judgment.

3. The petitioner-creditor filed petition under Section 9 of the Provincial Insolvency Act, 1920 (for brevity, 'the Act of 1920'), alleging that the 1st respondent-debtor borrowed Rs.2,50,000/- from him on 26-10-2005 for his agricultural expenses agreeing to repay the same with interest at 24% *p.a.* either to the petitioner or to his order as and when demanded; despite demands, the 1st respondent did not discharge the debt due; while the matter stood thus, the 1st respondent executed collusive sale deed dated 01-09-2006 in favour of the 2nd respondent to delay and defeat the claim of the petitioner; sale deed executed by the 1st respondent in favour of the 2nd respondent is nominal and, therefore, sought to adjudge the 1st respondent as insolvent while annulling sale deed dated 01-09-2006.

4. The 1st respondent filed counter denying the promissory note transaction between the petitioner and him and execution of promissory note for Rs.2,50,000/-. The 1st respondent further contended that schedule property was sold by him to the 2nd respondent for valuable consideration; no preference was given to any of the creditors; thereby, sale transaction covered by sale deed dated 01-09-2006 is valid and not liable to be set aside; and, therefore, prayed to dismiss the petition.

5. The 2nd respondent remained *ex parte*.

6. During the course of enquiry, on behalf of the petitioner, P.W.1 was examined and

got marked Exs.A1 and A2. No oral and documentary evidence was adduced on behalf of the 1st respondent.

7. Upon hearing argument of both counsel and considering oral and documentary evidence, the trial Court dismissed the petition.

8. Aggrieved by the decree and decretal order passed by the trial Court, the petitioner filed A.S.No. 102 of 2008 before the Appellate Court raising several contentions.

9. Upon hearing argument of both counsel, the Appellate Court allowed the appeal setting aside the decree and decretal order of the trial Court adjudging the 1st respondent as insolvent while setting aside sale deed No. 1284/2006 dated 01-09-2006.

10. Assailing the decree and judgment passed by the Appellate Court, the 2nd respondent preferred the present appeal raising several contentions. In para No. 6 of the grounds of appeal, learned counsel for the 2nd respondent raised several substantial questions of law. However, most of them are substantial questions of fact except contending that the 2nd respondent is *bona fide* purchaser for valuable consideration and such transaction can be protected under Section 55 of the Act of 1920.

11. Basing on the substantial questions of law raised in the grounds of appeal and argument advanced before this Court, the only substantial question of law that arises for consideration is

"Whether the 2nd respondent is entitled to claim protection under Section 55 of the Act of 1920?"

12. Undisputedly, the decree and judgment passed by the Appellate Court against the 1st respondent insofar as adjudging him as insolvent is not questioned by the 1st respondent who is aggrieved by the same. However, the only contention of the 2nd respondent is that he is *bona fide* purchaser for valuable consideration. Curiously, the Appellate Court, while adjudging the 1st respondent as insolvent under Section 9 of the Act of 1920, annulled sale deed dated 01-09-2006 but the Appellate Court cannot annul the sale transaction covered by original of Ex.A1 simultaneously

adjudging the 1st respondent as insolvent. At best, the Court can annul the transaction only on an application filed under Sections 53 and 54 of the Act of 1920 after compliance with Section 54-A of the Act of 1920. Thereby, annulling the document is an apparent error on the face of record and, therefore, the same is liable to set aside.

13. Learned counsel for the 2nd respondent questioning the judgment of the Appellate Court only contended that he is *bona fide* purchaser for valuable consideration and entitled for protection under Section 55 of the Act of 1920. No doubt, the scope of enquiry in a petition filed under Section 9 is limited and the plea that the 2nd respondent is *bona fide* purchaser can be raised in a petition filed under Sections 53 and 54 of the Act of 1920 for annulment of sale transaction covered by original of Ex.A1 but such plea is not open to him at this stage. Hence, the 2nd respondent is permitted to raise such plea available under Section 55 of the Act of 1920 in a petition filed under Sections 53 and 54 of the Act of 1920 for annulment of transaction covered by original of Ex.A1 dated 01-09-2006.

14. Viewed from any angle, the decree and judgment passed by the Appellate Court is free from any illegality to the extent of adjudging the 1st respondent as insolvent. Hence, the decree and judgment of the Appellate Court is hereby modified to the extent indicated above.

15. In the result, the appeal is allowed in part setting aside the annulment of sale transaction covered by original of Ex.A1 dated 01-09-2006 while confirming the other part of the judgment of the Appellate Court *i.e.* adjudging the 1st respondent as insolvent. Miscellaneous petitions pending in this appeal, if any, shall stand closed in consequence. No order as to costs.

M.SATYANARAYANA MURTHY, J.

Date: 28th July, 2015.

JSK