

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL MISCELLANEOUS SECOND APPEAL No.14 of 2010

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JUDGMENT:

_____ The petitioner in I.P.No.12 of 2000 preferred this appeal challenging the judgment and decree in A.S.No.51 of 2006, dated 27.01.2010 passed by I Additional District and Sessions Judge, Krishna at Machilipatnam reversing the finding recorded by the Senior Civil Judge, Avanigadda, whereunder the first respondent was adjudged as insolvent, vesting the suit schedule property on the Official Receiver, Krishna at Machilipatnam for administration by order dated 08.02.2006.

2. _____ For convenience of preference, the ranks given to the parties in I.P.No.12 of 2000 before the Senior Civil Judge at Avanigadda will be adopted throughout the judgment.

3. _____ The petitioner filed a petition under Section 9 of the Provincial Insolvency Act, 1920 (for short, 'the Act') to adjudge the first respondent as an insolvent and vest the schedule property on the Official Receiver and to annul the registered gift deed executed by the first respondent in favour of the second respondent dated 19.06.2000 as null and void, alleging that the petitioner had lent an amount of Rs.1,08,000/- to the first respondent on 07.07.1999 for the purpose of her family benefit and obtained an agreement in favour of the petitioner for repayment of debt on or before 07.07.2000 with interest at Rs.3-50 ps. per hundred per month. The first respondent executed the said agreement with an intention to discharge the debt in favour of the petitioner. In spite of repeated demands, the first respondent failed to pay the said debt. The first respondent in collusion with the second respondent executed a registered gift deed in favour of the second respondent on 19.06.2000 with an intention to evade payment of debt due to the petitioner. Therefore, the gift deed executed by the first

respondent in favour of the second respondent towards pasupukunkuma at the time of her marriage is invalid and not binding. Such act of transfer is a transfer of property within the meaning of transfer under Section 2(f) of the Act and prayed to adjudge the first respondent as insolvent vesting the schedule property on the Official Receiver for administration while annulling Ex.A.2.

4. The first respondent filed counter denying the material allegations of the petition *inter alia* contending that the first respondent never borrowed an amount of Rs.1,08,000/- from the petitioner on 07.07.1999 and executed an agreement agreeing to repay the same with interest at Rs.3-50 ps. per hundred and failed to pay the debt due to the petitioner while admitting about execution of registered gift deed – Ex.A.2 in favour of the second respondent. The first respondent denied the execution of Ex.A.2 with an intention to delay and defeat the claim of the creditor. The first respondent never borrowed an amount of Rs.1,08,000/- and never executed any agreement, dated 07.07.1999 and the same would not create a relationship of creditor and debtor between the petitioner and the first respondent. In the absence of any relationship of creditor and debtor, the petition is not maintainable and prayed for dismiss of the petition on this ground alone.

5. The first respondent further contended that at the time of marriage of the second respondent, the first respondent gave Ac.1.00 of land to the second respondent towards pasupukunkuma and it is not a transfer of property with an intention to delay and defeat the creditor. Therefore, the same cannot be annulled and such transfer does not amount to an act of insolvency and prayed to dismiss of the petition.

6. During the course of enquiry, on behalf of the petitioner, PWs.1 and 2 were examined and marked Exs.A.1 and A.2. On behalf of the respondents, RWs.1 to 3 were examined and marked Exs.B.1 and B.2.

7. The trial Court upon hearing both the counsel and considering

oral and documentary evidence on record, adjudged the first respondent as insolvent, vesting the schedule property on the Official Receiver for administration while declining to annul Ex.A.2.

8. Aggrieved by the order and decretal order passed by the Senior Civil Judge, Avanigadda in I.P.No.12 of 2000, respondent Nos.1 and 2 preferred A.S.No.51 of 2006 and

I Additional District and Sessions Judge, Krishna at Machilipatnam allowed the same setting aside the order and decretal passed by the trial Court on the ground that Ex.A.1 is inadmissible in evidence since it is unregistered and non-possessory mortgage deed, placing reliance of the decisions reported in 2005 (2) Law Summary 487 and 1997 (4) ALT 112 and other decisions of this Court, dismissed the I.P.

9. Aggrieved by the judgment and decree in A.S.No.51 of 2006 passed by I Additional District and Sessions Judge, Krishna at Machilipatnam, the present appeal is preferred.

10. During the course of arguments, the learned counsel for the appellant would contend that RW.1 denied even her signature on the vakalat, counter and etc. Therefore, no evidentiary value can be attached to her testimony. However, Ex.A.1 was not interpreted by the lower appellate Court in proper perspective and that an objection was raised about admissibility of Ex.A.1 before the trial Court, but the same was marked while rejecting the objection raised before the trial Court and the said finding became final. Consequently, the same cannot be questioned before the appellate Court.

11. None appeared for the respondents despite service of notices.

12. Considering the facts and circumstances of the case, the questions to be decided by this Court are

(1) Whether interpretation of Ex.A.1 is a substantial question of law or not? and

(2) When once a document – Ex.A.1 was admitted by the trial Court after rejecting the objections and not questioned in any higher forum, can the appellate Court interfere with the order passed by the trial Court or not?

13. The main contention of the learned counsel for the appellant is that Ex.A.1 was not properly interpreted by the lower appellate Court, in fact Ex.A.1 is a unregistered non-possessory mortgage deed and it is inadmissible in evidence for want of registration and payment of stamp duty. As per Article 58 of Schedule 1-A of the Indian Stamp Act, 1899 (for short, 'the Act'), security bond or mortgage deed executed by way of security for the due execution of an office or to account for money or other property, received by virtue thereof or executed by a surety to secure the due performance of a contract the same duty as Bottomry Bond for a sum equal to the amount or the market value of the property settled as set forth in such settlement. According to Article 14 of Schedule 1-A of the Act, the stamp duty payable on the Bottomry Bond is Rs.3 for every Rs.100/- or part thereof and if it exceeds Rs.1,000/-, the same duty as under Clause-(a) for the first Rs.1,000/- and for every Rs.500/- or part thereof in excess of Rs.1,000/-, Rs.15/-. Here, Ex.A.1 is an unregistered document, which is insufficiently stamped and executed on Rs.100/- stamp paper, and the amount due under Ex.A.1 is Rs.1,08,000/- and 3% of it, comes to Rs.3,240/- as per Article 48 read with Article 14 of Schedule 1-A of the Act. But, it was executed only on stamp paper worth Rs.100/-. Consequently, the document is inadmissible in evidence, as it was insufficiently stamped document.

14. Undoubtedly, once a document is marked, it cannot be questioned under Section 36 of the Act. In view of power conferred under Section 61 of the Act, the appellate Court can revisit the order of the trial Court regarding admissibility of a document and interfere with the same, Ex.A.1 document is unregistered, but it is required to be registered under Section 17 of the Registration Act as the document

Ex.A.1 creates transfer within the meaning of Section 5 of the Transfer of Property Act, 1882. Therefore, for want of registration, the document, which is marked as Ex.A.1, is inadmissible in evidence.

15. In view of my discussion, the document, which is marked as Ex.A.2, is inadmissible in evidence for the first reason that it is insufficiently stamped document and second reason is that it is not a registered document as required under Section 17 of the Registration Act. But the question of admissibility was raised before the trial Court as it was insufficiently stamped document but not with regard to non-registration. Even if the decision regarding admissibility of the document on the ground that it is insufficiently stamped attains finality on account of non-registration, the same cannot be admitted in evidence. If that is excluded from consideration, there is no material to establish that there exists a relationship of creditor and debtor between the petitioner and the first respondent and that the liability of the debtor is more than Rs.500/- as required under Section 9 (1) (a) of the Act.

16. Undoubtedly, the first respondent executed Ex.A.2- registered gift deed in favour of the second respondent towards pasupukunkuma at the time of her marriage and it is transfer of property within the definition of Section 2(f) of the Act and Section 5 of the Transfer of Property Act and it attracts Section 6 (1) (b) of the Act as it is an alienation or transfer of substantial part of the property of the debtor. But the petitioner is required to establish the requirements under Section 9(1) of the Act which enables the creditor to file an application under Section 9 of the Act to adjudge the debtor as insolvent. Here, the petitioner miserably failed to establish the relationship of creditor and debtor and the debt due to him is more than Rs.500/-, as required under Section

9 (1) (a) of the Act, in view of exclusion of Ex.A.1 from consideration, due to its inadmissibility for the two reasons mentioned above. Hence, the judgment and decree under challenge passed by the appellate

Court in A.S.No.51 of 2006 do not suffer from any illegality, warranting interference of this Court and consequently, I find that the appeal is devoid of merits. Both the points are answered.

17. In the result, Civil Miscellaneous Second Appeal is dismissed, confirming the judgment and decree of the appellate Court in A.S.No.51 of 2006 on the file of I Additional District and Sessions Judge, Krishna at Machilipatnam, but without costs, in the circumstances.

18. Consequently, Miscellaneous Petitions, if any, pending in this Civil Miscellaneous Second Appeal shall stand closed.

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M.SATYANARAYANA MURTHY, J

Date: 23.06.2015

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