

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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C.M.S.A.No. 19 OF 2015

JUDGMENT:

After obtaining leave of this Court, Boinapalli Bharath Kumar Reddy, third party, preferred this appeal challenging the order dated 09-07-2013 passed in I.P.No. 5 of 2012 on the file of the Court of III Additional District & Sessions Judge, Gadwal (for short, 'the trial Court'), whereunder D.K.Maddieshwar Rao-the 1st respondent, was adjudged as insolvent while directing the Official Receiver to take possession of B and C schedule property and settle claims of the creditors.

The appellant herein is the purchaser of C schedule property under registered sale deed *vide* document No. 2610 of 2012 dated 14-06-2012. Since then, the appellant has been in possession and enjoyment of the same. Earlier to execution of registered sale deed, C schedule property was mortgaged with the appellant herein by executing registered mortgage deed dated 05-01-2011 but the 1st respondent filed insolvency petition under Section 10 of the Provincial Insolvency Act, 1920 (for short, 'the Act of 1920'), to adjudge him as insolvent alleging that he carried on sheep business from 2000 to 2011 at Pebbair and Shanthinagar; in the course of business, he heavily indebted to several creditors and suffered various ailments; due to ill-health, he discontinued his business; on 14-06-2012, the appellant, mortgagee of C schedule property, and his uncle Babu Reddy came to the house of the 1st respondent and harassed him; they also beat and abused the 1st respondent and his wife demanding registration of sale deed in favour of the appellant; therefore, he executed registered sale deed in favour of the appellant on 14-06-2012; at present, except B schedule property, he had no other property but respondent Nos. 2 to 41 started harassing him for recovery of amount due to them; the total debts incurred by him is amounting to Rs.43,48,000/- but value of B schedule property is far below the value of debts and, therefore, the 1st respondent sought to adjudge him as insolvent.

Respondent Nos. 2 to 41 remained *ex parte*.

During the course of enquiry, the 1st respondent himself was examined as

P.W.1 but no documents were marked.

Upon hearing argument of learned counsel for the 1st respondent and considering oral evidence of P.W.1, the trial Court adjudged the 1st respondent as insolvent and granted the aforesaid reliefs.

The appellant, having come to know about the order passed by the trial Court adjudging the 1st respondent as insolvent, filed the present appeal challenging the order of the trial Court mainly on the ground that he is the purchaser of C schedule property under registered sale deed dated 14-06-2012 but, without impleading him, the trial Court adjudged the 1st respondent as insolvent and directed the Official Receiver to take possession of B and C schedule property; issuing such direction to the Official Receiver to take possession of C schedule property without impleading the appellant herein as a party to the insolvency proceedings is against the principles of natural justice; such order passed in the absence of affected party is unsustainable under law and prayed to set aside the same.

Learned counsel for the 1st respondent supported the order under challenge.

Considering rival contentions and perusing material available on record, the sole substantial question of law that arises for consideration is thus:

"Whether the order adjudging the 1st respondent without impleading the appellant whose property is directed to be taken possession by the Official Receiver be sustained?"

In the petition itself, the 1st respondent admitted that he executed registered sale deed dated 14-06-2012 in favour of the appellant but contended that it was obtained forcibly. The document dated 14-06-2012 relates to C schedule property but, without impleading the appellant, obtained the order behind the appellant. The appellant is a necessary party for the reason that he is the ultimate affected party on account of adjudging the 1st respondent as insolvent since direction was given to the Official Receiver to take possession of C schedule property covered by sale deed dated 14-06-2012. Passing of such order, without impleading the person whose rights are affected, is against the principles of natural justice. Hence, I find that failure to implead the appellant, purchaser of C schedule property under registered sale deed dated 14-06-2012, is sufficient to set aside the order under challenge.

In view of my foregoing discussion, the order dated 09-09-2013 passed in I.P.No. 5 of 2012 on the file of the Court of III Additional District & Sessions Judge, Gadwal, is set aside while remanding the matter to the trial Court directing the appellant to file a petition to implead himself as one of the respondents under Order I Rule 10 of the Code of Civil Procedure, if advised, and, on such impleadment, the trial Court is directed to decide the petition afresh preferably within three months from the date of receipt of a copy of this judgment after affording reasonable opportunity to both parties. In case no such petition is filed, the Court may proceed in accordance with law and decide.

The appeal is disposed of accordingly. Miscellaneous petitions pending in this appeal, if any, shall stand closed in consequence. No order as to costs.

M.SATYANARAYANA MURTHY, J.

Date: 06th August, 2015.

JSK