

HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL REVISION PETITION No.3380 OF 2006

Dated 13-4-2016

Between:

_____ Vankadaru Subbarajeswari and another.
_____ ..Petitioners.

And:

_____ Sankebathula Linga Rao and others.
_____ ..Respondents.

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ORDER: _____

This revision is preferred against order dated 23-1-2006 in A.S.No.163 of 2001 on the file of II Additional District Judge, West Godavari, Eluru whereunder judgment of Additional Senior Civil Judge, Eluru in I.P.No.3 of 1989 dated 12-7-2001 is confirmed.

The revision petitioners herein filed I.P.No.3 of 1989 to adjudicate first respondent in I.P. as insolvent and trial court on consideration of oral and documentary evidence of both parties, dismissed the creditor IP. holding that respondents 2 and 3 therein are bonafide purchasers of the schedule property for valuable consideration and there are no acts of insolvency. Questioning the same, revision petitioners herein preferred appeal to the District Court and II Additional District Judge, Eluru on a reappraisal of entire material on record, confirmed the findings of the trial court and dismissed the appeal. Aggrieved by the same, present revision is preferred.

Heard both sides.

Advocate for revision petitioners submitted that both trial court and appellate court erred in holding that the first respondent debtor was having substantial property on the date of filing of the petition. He further submitted that the court below should have seen that the transactions are

only to defraud the creditors and ought to have declared first respondent as insolvent and both courts have erred in not properly appreciating material on record.

On the other hand, advocate for respondents submitted that both the courts have rightly appreciated the evidence on record and that there are no grounds to interfere with the findings of the courts below. He further submitted that unless there is a jurisdictional error or material irregularity, this court cannot reappraise the facts while exercising revisional powers.

Now the point that would arise for my consideration in this revision is whether the orders of the courts below are legal, correct and proper?

POINT:

Admittedly, petition filed by revision petitioners is a creditor application and to get the first respondent adjudicated as insolvent, they are expected to prove certain aspects and courts below have examined material with reference to those aspects.

While appreciating evidence, both courts held that the petitioners failed to show that there was existence of debt as on the date of presentation of petition, and that the debtor committed acts of insolvency within three months prior to filing of petition.

The main ground on which revision petitioners approached insolvency court is that R.1 executed some sale deeds in favour of R.2 and R.3 to defraud creditors, those sale deeds are marked as Exs.A.1 and A.2 which are dated 16-5-1988.

On the other hand, the evidence produced on behalf of first respondent show that he has got other substantial properties apart from the properties covered by Exs.A.1 and A.2. He got marked Exs.B.1 and B.2 which reveal that first respondent has got other substantial properties apart from the property sold under Exs.A.1 and A.2, considering the same, both trial court and appellate court held that the first respondent proved that he has got other substantial properties apart from Exs.A.1 and A.2 and

therefore, sale transactions under Exs.A.1 and A.2 cannot be treated as acts of insolvency to defraud creditors. Both trial court and appellate court have elaborately discussed each and every aspect and held that there are no acts of insolvency and that petitioners have miserably failed in proving the ingredients under Section 25 (1) of Provincial Insolvency Act.

I do not find any material irregularity in the orders of the courts below nor there is any jurisdictional error to be interfered by this court while exercising revisoinal powers.

For these reasons, I am of the view that there are no merits in the revision and the same is liable to be dismissed.

Accordingly, this Civil Revision Petition is dismissed. No costs.

As a sequel to the disposal of this revision, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI
KUMAR

Dated 13-4-2016
Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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Dvs