

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.736 of 2018

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the 3rd respondent (impleaded 3rd respondent) assailing the orders, dated 24.10.2017, in I.A.no.1298 of 2009 in I.P.no.22 of 2009 on the file of Senior Civil Court, Markapur.

2. I have heard the submissions of *Sri K.Raja Reddy*, learned counsel appearing for the revision petitioner/ 3rd respondent (hereinafter referred to as '3rd respondent', for brevity); and, of *Ms. Nimmagadda Revathi*, learned counsel appearing for the 5th respondent herein/ 5th petitioner in the IP (hereinafter referred to as '5th petitioner', for brevity). The parties hereinafter shall be referred to as arrayed in the insolvency petition for convenience and clarity.

2.1 I have perused the material record.

3. The facts, which are discernable from the pleadings and submissions made, in brief, are as follows:

The petitioners including the 5th petitioner filed the aforesaid insolvency petition against Kolli Venkata Naga Mallikarjuna Rao and another under Section 9 of the Provincial Insolvency Act, 1920, requesting to adjudicate the said 1st respondent, Kolli Venkata Naga Mallikarjuna Rao, as an insolvent and vest his 1/4th share in the IP schedule property with the Official Receiver and, set aside the bogus and nominal sale deed, dated 11.02.2009, executed by the 1st respondent in favour of the 2nd respondent in respect of 1/4th share of the 1st respondent in the IP schedule property. Though the insolvency petition is originally filed against the respondents 1 & 2, during the pendency of the insolvency petition, the petitioners filed the subject I.A no.1298 of 2009 to

implead the revision petitioner as 3rd respondent in the insolvency petition as he is a necessary party. In the said interlocutory application permission was also sought to include the property covered by the gift settlement deed, bearing Document no.2689, dated 05.07.2008, in the IP schedule property and vest the same with the Official Receiver after canceling the said gift settlement deed executed by the 1st respondent in favour of the revision petitioner/ proposed 3rd respondent. The said application was resisted by the proposed 3rd respondent/ revision petitioner by filing a counter. However, by the impugned order, the trial Court allowed the application. Hence, the aggrieved impleaded 3rd respondent filed this revision.

4. In the first place it is necessary to take note of the case of the petitioners, who sought impleadment of the revision petitioner as the 3rd respondent in the IP. Their case is as follows:

The insolvency petition is filed against the respondents 1 & 2 *inter alia* seeking adjudication of the 1st respondent as an insolvent and to set aside the sale deed, executed by the 1st respondent in favour of the 2nd respondent and for other appropriate reliefs. While so, the 1st respondent and the proposed 3rd respondent/ revision petitioner under a pre-plan and conspiracy and to evade the debts due to the creditors, entered into a sham and collusive transaction under the gift settlement deed, dated 05.07.2008, executed by the 1st respondent in favour of the 3rd respondent. The said transaction, which took place about two years prior to the filing of the IP, has come to the notice of the petitioners. Hence, the petitioners are constrained to file the subject application seeking permission to implead the proposed party as party 3rd respondent in the insolvency petition and to include the property covered by the gift settlement deed, bearing Document no.2689, dated 05.07.2008, in the IP schedule property and vest the same with the Official Receiver after canceling or setting aside the said gift settlement deed executed by the 1st respondent in favour of the revision petitioner/ proposed 3rd respondent.

5. The case of the revision petitioner/3rd respondent is this: 'The allegations in the affidavit filed in support of the petition that with a pre-plan and collusion, the 1st respondent secretly executed a nominal and bogus gift settlement deed, dated 05.07.2008, in favour of this respondent is false. The 1st respondent has no other immovable property except a 1/4th share in the IP schedule properties is false. The allegation that the 1st respondent committed acts of insolvency by executing a nominal sale deed, dated 11.02.2009, in favour of the 2nd respondent is false. The 2nd respondent purchased the property covered by the sale deed for a valuable consideration. The petition against the 3rd respondent is not maintainable as the transaction under the gift settlement deed, dated 05.07.2008, took place more than one year two months prior to the institution of the insolvency petition.

6. As already noted, by the impugned order, the learned Senior Civil Judge allowed the petition filed by the petitioners.

7. The submissions made by the proposed 3rd respondent/ revision petitioner are as follows:

The order impugned is unsustainable under facts and in law. The learned Senior Civil Judge exceeded his jurisdiction in allowing the application filed by the petitioners on the sole ground that impleadment of 3rd respondent and granting the relief sought in the interlocutory application is necessary for avoiding the multiplicity of proceedings. The interlocutory application is barred by limitation.

8. Learned counsel for the 5th respondent herein while supporting the order of the Court below contended as follows: 'The 1st respondent and the 3rd respondent are brothers (cousins). The gift settlement transaction under the gift settlement deed, dated 05.07.2008, is sham and collusive. It is intended to evade the debts payable by the 1st respondent to the creditors. The said act is

also an act of insolvency committed by the 1st respondent. The said collusive transaction was entered into just about two years before filing of the insolvency petition. The petitioners including the 5th petitioner in the IP are not aware of the said transaction earlier. On coming to know of the said transaction, the petitioners filed the subject petition seeking appropriate reliefs. The trial Court is justified in allowing the petition in the facts and circumstances of the case.'

9. It is submitted that the 1st respondent and the 3rd respondent are related. Insolvency petition is filed by the petitioners against the 1st respondent on the ground that he committed an act of insolvency by executing a collusive and sham registered sale deed in favour of the 2nd respondent. The petitioners in the insolvency petition, on coming to know that the 1st respondent also executed a gift settlement deed, dated 05.07.2008, in favour of the revision petitioner/proposed 3rd respondent, filed the subject interlocutory application for impleadment of the 3rd respondent as party respondent to the IP pleading *inter alia* that the said gift settlement deed is a sham and collusive document and that it is intended to evade payment of just debts due by the 1st respondent to his creditors and that, therefore, it is necessary to implead the proposed 3rd respondent as a party respondent to the IP and include the property covered by the gift settlement deed to the schedule of the IP and set aside the said gift settlement deed and vest the property covered by the said document with the Official Receiver in the interest of their creditors. As per the settled law, this is not the stage to go into the merits of the matter involved in the proposed request in the proposed application of the petitioners and record any findings on its merits, as it is for the learned Senior Civil Judge to decide the merits of the matter involved in the proposed request at an appropriate stage. If the request is granted, no prejudice would be caused to the impleaded 3rd respondent as it is always open to him to contest the IP on merits by raising all the contentions, which the

facts and law permit. In the light of the submissions, and taking into consideration the facts & circumstances of the case, this Court holds that the learned Senior Civil Judge is justified in permitting impleadment of the 3rd respondent and in permitting the inclusion of the property covered by the gift settlement deed in the schedule of the insolvency petition to facilitate effective adjudication of the claims of the parties.

10. In the result, the Civil Revision Petition is dismissed. It is made clear that the Court below shall permit accordingly the impleadment of the proposed party as party 3rd respondent in the IP and also permit the inclusion of the subject gift settlement property in the schedule of IP and the consequential amendments of the prayer made in the IP and then decide the issue as to whether the said gift settlement deed is true or not and also the issue in regard to the entitlement of the petitioners to the present reliefs by following the procedure established by law.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

05th September 2018
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M. SEETHARAMA MURTI, J