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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.S.A.Nos.17 & 18 of 2015

1. P.Arunagiri
2. R.Muthaiyan
3. M.Yoganathan .. Appellants in C.M.S.A.No.17 of 2015

K.Chinnusamy .. Appellant in C.M.S.A.No.18 of 2015

-vs-

Murugesan (Died)

1. Perumayee
W/o Periyanna Gounder
2. Manonmani
W/o Late Murugesan
3. Saranya
W/o Sathiya Prakash
4. Savitha
W/o Arun Raja
5. S.Kanagasaabapathi
6. K.Chinnusamy
7. Selvarajan
S/o Kuppusamy Gounder
8. Velu Rajamani
S/o K.R.Velusami
9. Official Receiver
District Court Campus
Hasthampatti
Salem 636 007 .. Respondents in C.M.S.A.No.17 of 2015

Murugesan (Died)

1. Perumayee
W/o Periyanna Gounder
2. Manonmani
W/o Murugesan
3. Saranya
W/o Sathyaprakash
4. Savitha
W/o Arun Raja

5. The Official Receiver
District Court Campus



Hasthampatti
Salem 636 007

6. S.Kanagasabapathi
7. Selvarajan
S/o Kuppusamy Gounder
8. Velu Rajamani
S/o K.R.Velusami .. Respondents in C.M.S.A.No.18 of 2015

Memorandum of Grounds of Civil Miscellaneous Second Appeals filed under Section 75 of the Provincial Insolvency Act, 1920 read with Section 100 of the Code of Civil Procedure, against the fair and decretal orders dated 13.02.2015 passed in C.M.A.Nos.13 & 14 of 2014 on the file of the learned Principal District Judge, Namakkal, confirming the fair and decretal orders dated 15.07.2014 passed in I.A.Nos.20 & 24 of 2014 in I.A.No.10 of 2010 in I.P.No.44 of 1999 on the file of the learned Subordinate Judge, Namakkal, respectively.

For Appellant(s) :: Mrs.Hema Sampath
Senior Counsel for
Mrs.R.Meenal

For Respondents :: Mr.V.Raghavachari for
Mr.K.Ashok Chakravarthy for R8

JUDGMENT

Heard learned counsel for the parties through video conferencing due to the Covid-19 pandemic.

2. These two civil miscellaneous second appeals are directed against the impugned fair and decretal orders dated 13.02.2015 passed by the learned Principal District Judge, Namakkal in C.M.A.Nos.13 & 14 of 2014, confirming the fair and decretal orders dated 15.07.2014 passed by the learned Subordinate Judge, Namakkal in I.A.Nos.20 & 24 of 2014 in I.A.No.10 of 2014 in I.P.No.44 of 1999, respectively.

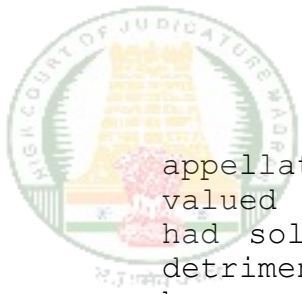
3. The facts in brief leading to the filing of the C.M.S.A.No.17 of 2015 are stated as follows:-

Mr.P.Arunagiri, the first appellant herein lent a sum of Rs.2,25,000/- on 7.6.98 to Mr.Selvarajan, the seventh respondent herein, who had executed a promissory note in his favour agreeing to repay the said amount to him or to his order on demand along with interest at the rate of Re.1/- per Rs.100/- per month. Similarly, Mr.R.Muthaiyan and Mr.M.Yoganathan, the second and third appellants herein have also lent a sum of Rs.2,00,000/- and Rs.1,75,000/- to the seventh respondent herein



on 22.11.98 and 30.1.99 respectively, for which also the seventh respondent executed promissory notes agreeing to repay the loan amounts at the rate of Rs.1.25p and Re.1/- for Rs.100/- per month. But the seventh respondent failed to repay the loan amounts to the appellants in spite of their repeated demands. Therefore, one Murugesan filed I.P.No.37 of 1999 against him and got an order adjudging the seventh respondent as an insolvent on 9.11.2000. He also filed I.A.No.10 of 2010 to set aside the sale of properties which were vested with the Official Receiver, Salem stating various reasons. Besides, he filed I.A.No.48 of 2011 for examining the Official Receiver as a witness and the said petition was pending. After filing the I.A.Nos.10 of 2010 & 48 of 2011, the said Murugesan died, therefore, the respondents 1 to 4 herein filed I.A.Nos.13, 14 & 15 of 2014 seeking to condone the delay, to set aside the abatement and to implead them as parties in the I.A.No.10 of 2010. However, during the pendency of the aforesaid interlocutory applications, the respondents 1 to 4/proposed parties filed a memo stating that they were not pressing the interlocutory applications. When the appellants are the creditors, it has been contended that the Official Receiver, Salem, the ninth respondent herein ought to have sent notice to the appellants/creditors before proceeding with the sale of the properties of the debtor-Selvarajan. It was also pleaded that since the respondents 1 to 4 herein, being the legal heirs of the deceased Murugesan, also joined hands with the other respondents to defeat the appellants rights, they filed I.A.No.20 of 2014 seeking to implead them as petitioners 5 to 7 in I.A.Nos.13 to 15 of 2014 filed by the respondents 1 to 4 herein and also as petitioners in the I.A.No.10 of 2010. Considering the fact that the appellants have filed the interlocutory application with a delay of more than a decade only to defeat the rights of the eighth respondent herein/auction purchaser, the learned Subordinate Judge, Namakkal dismissed the I.A.No.20 of 2014 by order dated 15.7.2014.

3.2. Aggrieved by the said order, the appellants filed C.M.A.No.13 of 2014 inter alia contending that the learned Subordinate Judge, Namakkal erred in holding that the appellants have failed to prove that they made several demands to the seventh respondent/insolvent; that there was no bona fide intention on the part of the appellants; that the Official Receiver in the counter affidavit has clearly stated that after proper sale proclamation only the property was brought to auction; that the appellants have not stated that they approached the Official Receiver, Salem alleging that they are also the creditors of the insolvent; that they have come to the Court with a delay of more than a decade and that impleading the appellants would defeat the rights of the auction purchaser. It was also one of the contentions raised before the lower



appellate Court that when the property of the insolvent is valued at more than Rs.50 lakhs, the Official Receiver, Salem had sold the same for a paltry sum of Rs.6,50,000/- to the detriment of the other creditors, therefore, the other creditors have come to the Court. This crucial aspect has been overlooked by the Court below. Moreover, the Court below failed to look into yet another crucial aspect that the Official Receiver, Salem was only incharge of the office of Official Receiver, Namakkal and on the appointment of the Official Receiver, Namakkal by the Government of Tamil Nadu in G.O.(3D) No.50 dated 22.9.2009, the Official Receiver, Salem has no power to function as Official Receiver, Namakkal and he has no authority also to execute the sale deed in favour of the eighth respondent/auction purchaser and therefore the action of the ninth respondent was not bona fide.

3.3. Opposing the above contentions, the Official Receiver, Salem filed a detailed counter affidavit stating that the Official Receiver, Namakkal alone has jurisdiction in the matter, as the insolvent's residence and his properties are within the jurisdiction of Namakkal District, therefore, all the papers relating to the properties have been sent to the Official Receiver, Namakkal from the Official Receiver, Salem. Hence it was pleaded that the appeal may be dismissed for wrongly arraying the ninth respondent as a party.

3.4. Since one of the grounds raised by the deceased creditor Murugesan in I.A.No.10 of 2010 to set aside the sale alleging that the sale was for a throwaway price and also without any proper proclamation of sale as required by law, the lower appellate Court, on perusal of the counter affidavit filed by the Official Receiver, Salem, reiterating that only after due sale proclamation, the property was brought to auction and further in the light of the proviso to Section 68 of the Provincial Insolvency Act stating that no application under this Section shall be entertained after the expiration of twenty-one days from the date of the act or decision complained of, considering the fact that the sale was held on 30.12.2005 by the Official Receiver and any aggrieved creditor should have filed the application within twenty-one days from the date of the impugned sale, namely, on or before 20.1.2006, but, in the case on hand, the application was filed after a lapse of several years, which was not maintainable in view of the bar of limitation imposed by Section 68 of the Provincial Insolvency Act, concurring with the order passed by the learned Subordinate Judge, Namakkal, ultimately dismissed the C.M.A.No.13 of 2014 by order dated 13.2.2015. Feeling aggrieved, C.M.S.A.No.17 of 2015 has been filed by the appellants raising the following substantial questions of law:-



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"(1) Whether the application filed in I.A.No.10 of 2010 was barred by limitation without appreciating the fact that the application was filed on 8.1.2010, on which date the Official Receiver passed an order for issue of a cheque to purchase Non Judicial Stamp papers for executing the sale deed, which was only an order of confirmation of sale by implication?

(2) Whether the Official Receiver, Salem has got jurisdiction or power to conduct the auction sale and execute the sale deed on 18.1.2010 after an Official Receiver was appointed for Namakkal District by the Government of Tamil Nadu on 22.9.2009?"

4. Similarly, the facts in brief leading to the filing of the C.M.S.A.No.18 of 2015 are stated as follows:-

Mr.S.Kanagasabapathi, the sixth respondent herein and Mr.K.Chinnusamy, the appellant herein filed I.P.No.44 of 1999 on the file of the learned Subordinate Judge, Namakkal seeking to adjudge Mr.Selvarajan, the seventh respondent herein as an insolvent inter alia pleading that he borrowed a sum of Rs.2,00,000/- from the sixth respondent on 16.9.97 and Rs.1,75,000/- from the appellant on 27.1.98 respectively and executed promissory notes in their favour agreeing to repay the said amounts with interest at the rate of Rs.1.50p for Rs.100/- per month or to their order on demand, but failed to repay the said amounts and also sold away his properties with an intent to defeat the rights of the creditors. The said I.A.No.44 of 1999 was allowed on 30.3.2001 adjudging the seventh respondent debtor as an insolvent. The appellant has been already arrayed as the third respondent in the I.A.No.10 of 2010 filed by the deceased Murugesan to set aside the sale. It was therefore pleaded that since the respondents 1 to 4 herein, being the legal heirs of the deceased Murugesan, also joined hands with the other respondents to defeat the appellant's rights, he filed I.A.No.24 of 2014 seeking to transpose him as the petitioner in I.A.No.10 of 2010 from the status of third respondent. Considering the fact that the appellant has adopted the counter affidavit filed by the auction purchaser and rebutting the same after two years, the learned Subordinate Judge, Namakkal dismissed the I.A.No.24 of 2014 by order dated 15.7.2014.

4.2. Aggrieved by the said order, the appellant filed C.M.A.No.14 of 2014 inter alia contending that the learned Subordinate Judge, Namakkal erred in holding that there was a delay in filing the application; that because the appellant's counsel had adopted the counter of the auction purchaser, the



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appellant is not entitled to maintain his prayer. It was also pleaded that the Court below failed to give an opportunity to the appellant to explain his cause in respect of the memo filed by his counsel in I.A.No.10 of 2010 in I.P.No.44 of 1999 adopting the counter of the auction purchaser. It was also one of the contentions raised before the lower appellate Court that when the property of the insolvent is valued at more than Rs.50 lakhs, the Official Receiver, Salem had sold the same for a paltry sum of Rs.6,50,000/- to the detriment of the other creditors, therefore, the other creditors have come to the Court. This crucial aspect has been overlooked by the Court below. Moreover, the Court below failed to look into yet another crucial aspect that the Official Receiver, Salem has no authority to execute the sale deed in favour of the eighth respondent/auction purchaser after the appointment of the regular Official Receiver for Namakkal District and therefore the action of the fifth respondent was not bona fide.

4.3. Opposing the above contentions, the Official Receiver, Salem filed a detailed counter affidavit stating that the Official Receiver, Namakkal alone has jurisdiction in the matter, as the insolvent's residence and his properties are within the jurisdiction of Namakkal District, therefore, all the papers relating to the properties have been sent to the Official Receiver, Namakkal from the Official Receiver, Salem. Hence it was pleaded that the appeal may be dismissed for wrongly arraying the fifth respondent as a party.

4.4. The lower appellate Court, on perusal of the counter affidavit filed by the Official Receiver, Salem, reiterating the order passed by the Court below that the appellant had already filed I.P.No.44 of 1999 along with the sixth respondent and obtained an order adjudging the seventh respondent as an insolvent on 30.3.2001 and that the counter filed by the eighth respondent/auction purchaser has been adopted by them, rejected his plea of ignorance of the memo filed by his counsel in the year 2012, as not acceptable after a lapse of two years before the trial Court in the year 2014, concurring with the order passed by the learned Subordinate Judge, Namakkal, ultimately dismissed the C.M.A.No.14 of 2014 by order dated 13.2.2015. Feeling aggrieved, C.M.S.A.No.18 of 2015 has been filed by the appellant raising the following substantial questions of law:-

"(1) Whether the auction sale conducted on 28.12.2005 not preceded by a 30 day clear notice is valid in law?

(2) Is not the appellant entitled to get substituted in the place of the petitioning creditor whose debt is settled?"

5. Mrs.Hema Sampath, learned Senior Counsel appearing for



the appellant(s) submitted that when the I.P.No.37 of 1999 filed by the deceased Murugesan against the seventh respondent debtor Selvarajan was allowed on 9.11.2000, the said Murugesan filed I.A.No.10 of 2010 to set aside the sale of property which was vested with the Official Receiver, Salem stating various reasons in the petition and one such reason cited was that the Official Receiver, Salem had sold away the property for a throwaway price of Rs.6,50,000/-, whereas the value of the property was above Rs.50 lakhs. Moreover, the Official Receiver failed to send notice to the insolvent. Besides, as no affidavit under Rule 6 was filed, the creditors were not informed by notice about the sale of the properties and the sale was held for a throwaway price without any proper proclamation as required by law. In view thereof, the I.A.No.10 of 2010 to set aside the sale should have been allowed.

6. Mr.V.Raghavachari, learned counsel appearing for the eighth respondent/auction purchaser, drawing the notice of this Court to Section 68 of the Provincial Insolvency Act along with the proviso, pleaded that if the insolvent or any other creditor is aggrieved by any act or a decision of the Receiver, the aggrieved person may apply to the Court and the Court may also confirm, reverse or modify any decision complained of, provided that no application under the Section shall be entertained after the expiration of twenty-one days from the date of the act or the decision complained of. In the cases on hand, when the sale was held on 30.12.2005 by the Official Receiver, if the appellant(s) were really aggrieved by the fact that the property has been sold away for a throwaway price of Rs.6,50,000/-, as against the value of the property allegedly exceeding Rs.50 lakhs, they should have filed the application within twenty-one days from the date of the impugned sale, namely, on or before 20.1.2006. Since the interlocutory application has been filed after a lapse of several years, the Courts below have rightly rejected their case on the ground that the said application is not legally maintainable.

7. I also find merits on the submissions made by the learned counsel appearing for the eighth respondent. When it is the contention of the appellant(s) that the Official Receiver had failed to send notice to the seventh respondent insolvent and no affidavit under Rule 6 was filed, as a result, the creditors were not informed by notice about the sale of property and that the sale was also held for a throwaway price and that too, without any proper proclamation as required by law, the I.A.No.10 of 2010 to set aside the sale should have been allowed, is far from acceptance, because the I.A.No.10 of 2010 to set aside the sale held on 30.12.2005 came to be filed on 8.1.2010 after a period of five long years, therefore, the bar of limitation contemplated under Section 68 of the Provincial



Insolvency Act would be attracted. In this context, it is pertinent to extract Section 68 of the Provincial Insolvency Act, as follows:-

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"68. Appeal to Court against receiver. If the insolvent or any of the creditors or any other person is aggrieved by any act or decision of the receiver, he may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just:

Provided that no application under this section shall be entertained after the expiration of twenty-one days from the date of the act or decision complained of."

8. A cursory reading of the above clearly shows that if the insolvent or any of the creditors or any other person is aggrieved by any act or decision of the receiver, he may apply to the Court and the Court may confirm, reverse or modify the act or decision complained of, provided that the said application shall be filed within twenty-one days from the date of the act or decision complained of. But in the cases on hand, the sale was held on 30.12.2005 by the Official Receiver, therefore, if any one is aggrieved for the reason that the property has been sold away for a throwaway price, any such application should have been filed within twenty-one days from the date of the impugned sale, namely, on or before 20.1.2006. As the I.A.No.10 of 2010 has been filed on 8.1.2010 after a lapse of five long years, the said application is legally not maintainable. Therefore only, the Courts below clearly holding that the I.A.Nos.20 & 24 of 2014 in I.A.No.10 of 2010 in I.P.No.44 of 1999 having been filed belatedly after a decade by the appellant(s) are also not maintainable, rightly rejected their case, by the impugned orders. Since the appeals are liable to be dismissed on the ground of maintainability of the interlocutory applications, it is unnecessary to go into the other issues. Therefore, answering the substantial questions of law against the appellant(s), both the civil miscellaneous second appeals fail and they are dismissed confirming the orders passed by the Courts below. Consequently, M.P.No.1 of 2015 is also dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar



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To

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1. The Principal District Judge
Namakkal
2. The Subordinate Judge
Namakkal

+2cc to Mrs.R.Meenal, Advocate, S.R.No.38718/2021, 38719/2021
+2cc to M/s.K.Ashok Chakravarthy, Advocate, S.R.No.38811/2021,
38812/2021

C.M.S.A.Nos.17 & 18 of 2015

SR(CO)
SB(27/07/2021)